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26 California non-profit corporation.

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THE PEOPLE OF THE STATE OF  
CALIFORNIA on the RELATION of SAN  
JOSE POLICE OFFICERS' ASSOCIATION,

*Plaintiff,*

v.

CITY OF SAN JOSE, and CITY COUNCIL OF  
SAN JOSE,

*Defendants.*

CASE NO. 113-CV-245503

REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF MOTION FOR  
INTERVENTION

DATE: April 12, 2016  
TIME: 9:00 A.M.  
DEPT: 7  
JUDGE: McGowen

**BY FAX**

Proposed Intervenor, Peter Constant, Steven Haug and the Silicon Valley Taxpayer's  
Association, respectfully request that the Court take Judicial Notice of the following official

**FILED**  
MAR - 9 2016  
DAVID H. YAMASAKI  
Chief Executive Officer/Clerk  
Superior Court of CA County of Santa Clara  
BY \_\_\_\_\_ DEPUTY

1 government records pursuant to Evidence Code § 452, subdivs. (b) and (c) on the basis that the  
2 documents are official records of the City of San Jose and are directly relevant to intervention, as  
3 well as this Quo Warranto action, for the reasons set forth in the Memorandum of Points and  
4 Authorities in support of the Motion for Intervention:

5 1. Excerpts of the San Jose City Charter, Article XV, sections 1500 to 1506 "Retirement"  
6 and Article XV-A, sections 1501-A to 1515-A "Retirement", at pp. 61-76.

7 2. City of San Jose Memorandum to the Honorable Mayor and City Council from Jennifer  
8 Schembri and Jennifer A. Maguire, dated July 24, 2015; Subject: Approval of the Terms of the  
9 Alternative Pension Reform Settlement Framework Agreement Concerning the Litigation Arising out  
10 of Measure B with the San Jose Police Officers' Association (SJPOA) and the San Jose Fire Fighters,  
11 International Association of Fire Fighters, Local 230 (IAFF, Local 230) and Related Appropriation  
12 Actions (Council Agenda 8/11/15);

13 3. City of San Jose Supplemental Memorandum to the Honorable Mayor and City Council  
14 from Jennifer Schembri, dated August 17, 2015; Subject: Actions Related To The Settlement  
15 Agreement with the San Jose Police Officers' Association and the San Jose Fire Fighters, International  
16 Association of Fire Fighters, Local 230 (Council Agenda 8/18/15, Item: 3.4);

17 4. Addendum #2 to July 15, 2015 Alternative Pension Reform Settlement Framework  
18 Between the City of San Jose and the San Jose Police Officers' Association (POA), The International  
19 Association of Firefighters, Local 230 (IAFF); Proposed Quo Warranto Implementation Plan, August  
20 14, 2015 (Attachment B to the August 17, 2015 Supplemental Memorandum);

21 5. Minutes of the City Council, City of San Jose, dated Tuesday, August 25, 2015;

22 6. Federated Alternative Pension Reform Settlement Framework, dated November 23,  
23 2015, updated December 14, 2015 (City of San Jose);

24 7. City of San Jose Memorandum to the Honorable Mayor and City Council from Jennifer  
25 Schembri and Jennifer A. Maguire, dated December 4, 2015; Subject: Approval of the Terms of the  
26 Alternative Pension Reform Settlement Framework Agreement Concerning the Litigation Arising out  
27 of Measure B with Bargaining Units Representing Employees in the Federated City Employees'

28

1 Retirement System and Modifications for Employees in Unit 99 and Units 81/82; and Related  
2 Appropriation Actions (City Council Agenda 12/15/15, Item: 3.7);

3 8. City of San Jose, City Council Agenda, December 15, 2015 Synopsis;

4 9. Federated Alternative Pension Reform Settlement Framework Agreement – Executive  
5 Summary, dated February 24, 2016 (City of San Jose); and

6 10. Alternative Pension Reform Settlement Framework Agreement – Executive Summary,  
7 dated September 4, 2015 (City of San Jose).

8 **I. PUBLIC AVAILABILITY OF RECORDS**

9 Exhibit 1 is generally available to the public on the City of San Jose's website, at  
10 <<http://www.sanjoseca.gov/index.aspx?NID=397>>, City Clerk, "City Charter."

11 Exhibits 2 through 4, 6, 7, 9 and 10 are generally available to the public on the City of San  
12 Jose's website, at <<http://www.sanjoseca.gov/index.aspx?NID=4657>>, Office of the City Manager,  
13 "Measure B Settlement Discussions."

14 Exhibits 5 and 8 are generally available to the public on the City of San Jose's website, at  
15 <<http://www.sanjoseca.gov/index.aspx?nid=4535>>, Government, "Council Agendas 2015."

16 **II. AUTHORITY FOR JUDICIAL NOTICE**

17 Pursuant to California Evidence Code, section 452:

18 Judicial notice may be taken of the following matters: . . . (b) Regulations  
19 and legislative enactments issued by or under the authority of the United  
20 States or any public entity in the United States. . . (c) Official acts of the  
legislative, executive, and judicial departments of the United States and  
of any state of the United States.

21 (Evidence Code § 452, subdvs. (b) and (c).)

22 Evidence Code § 452(c) in particular, authorizes a court to take judicial notice of "[o]fficial  
23 acts of the legislative, executive, and judicial departments of the United States and of any state of the  
24 United States." These "include records, reports and orders of administrative agencies." (*Rodas v.*  
25 *Spiegel* (2001) 87 Cal.App.4th 513, 518.) The Court may also take judicial notice of policy statements  
26 and memoranda of governmental agencies, including those published on the internet. (See, e.g.,  
27 *People ex rel. Totten v. Colonia Chiques* (2007) 156 Cal.App.4th 31, 38 n.3.) Judicial notice may also  
28 be taken of rulemaking and other proposals by government officials. (See, e.g., *California Ass'n for*

1 *Health Services at Home v. Department of Health Services* (2007) 148 Cal.App.4th 696, 702 n.2; see  
2 also, *As You Sow v. Conbraco Industries* (2005) 135 Cal.App.4th 431, 438 n.3.)

3 Reports issued by government agencies are the proper subjects of judicial notice. (See  
4 *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 842, n.3 ["we may take judicial notice of  
5 the report of a state executive officer as reflecting an '[o]fficial act' ([Evid.Code,] § 452, subd. (c))"];  
6 see also *Estate of Giolitti* (1972) 26 Cal.App.3d 327, 335 ["we have taken judicial notice of a  
7 memorandum from the State Controller's Office ... [setting] forth the Controller's posture to disallow  
8 the gift tax deduction].)

9 The City of San Jose, along with other cities and counties in the State of California, is a public  
10 entity as defined by Evidence Code § 200. The provisions of California Evidence Code section 452  
11 have long been interpreted to enable the courts to take judicial notice of enactments of a public entity,  
12 government records and reports, laws and official acts. (See, 1 Witkin, California Evidence, (4th  
13 2000) Judicial Notices, § 19, pg. 113; *People ex rel. Lungren v. Community Redevelopment Agency*  
14 (1997) 56 Cal.App.4th 868 [considering a challenge to redevelopment agency's development  
15 agreement with Indian tribe, Court of Appeal would take judicial notice of agreement and  
16 attachments]; *Laraway v. Sutro & Co., Inc.* (2002) 96 Cal.App.4th 266 [Court of Appeal could take  
17 judicial notice of a school board resolution which was apparently inadvertently replaced by a second  
18 copy of nearly identical resolution before the trial court.])

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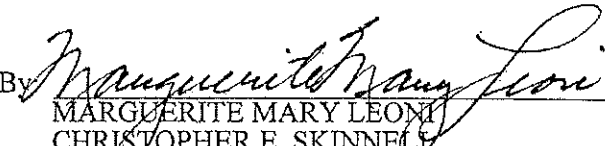
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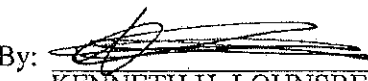
1 Courts have specifically recognized the application of Section 452, subdivs. (b) and (c) to  
2 local entities. (*Trinity Park v. City of Sunnyvale* (2011) 193 Cal.App.4th 1014, 1027, ["local  
3 ordinances and the official resolutions, reports, and other official acts of a city."] overruled on other  
4 grounds by *Sterling Park, L.P. v. City of Palo Alto* (2013) 57 Cal.4th 1193.)

5 Respectfully submitted,

6 DATED: *March 9, 2016* NIELSEN, MERKSAMER, PARRINELLO, MUELLER &  
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12 DATED: *March 9, 2016* LOUNSBERY FERGUSON ALTONA & PEAK, LLP

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#### **SECTION 1305. Exercising Right Without Franchise.**

The exercise by any person, firm or corporation of any privilege for which a franchise is required without procuring such franchise shall be a misdemeanor and each day that such continues shall constitute a separate violation.

#### **SECTION 1306. Article Not Applicable to City.**

Nothing in this Article shall be construed to apply to the City, or any department thereof, when furnishing any public utility or service.

#### **SECTION 1307. Preservation of Rights.**

Nothing contained in this Article shall be construed to affect or impair any rights, powers or privileges vested in, possessed by or available to the City by virtue of previous Charter provisions relating to franchises.

### **ARTICLE XIV SCHOOL SYSTEM**

#### **SECTION 1400. Effect of Charter.**

The organization, government and administration of the public school system in the City of San José shall not be affected by the adoption of this Charter, but shall continue in existence as is now or hereafter prescribed by the Education Code of the State of California.

### **ARTICLE XV RETIREMENT**

#### **SECTION 1500. Duty to Provide Retirement System.**

Except as hereinafter otherwise provided, the Council shall provide, by ordinance or ordinances, for the creation, establishment and maintenance of a retirement plan or plans for all officers and employees of the City. Such plan or plans need not be the same for all officers and employees. Subject to other provisions of this Article, the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees; provided, however the Council shall not establish any new or different plan after November 3, 2010 that is not actuarially sound.

*Amended at election November 2, 2010*

## **SECTION 1501. Exclusions.**

- (a) The Council in its discretion may exclude all or any of the following persons from any or all retirement plans, to wit: Persons mentioned in sub-paragraphs (1), (2), (4), (5), (6), and (7) of sub-section (a) of Section 1101 of this Charter; all persons employed or whose services are contracted for pursuant to any transfer, consolidation or contract mentioned or referred to in Section 1109 of this Charter; persons employed pursuant to Section 1110 of this Charter; persons in City service primarily for training, study or educational purposes; persons employed or paid on a part-time, per diem, per hour or any basis other than a monthly basis; temporary employees; persons employed pursuant to any relief or anti-poverty program primarily for the purpose of giving relief or aid to such persons. Also, persons who are members of any other retirement or pension system, other than the federal social security system or any other federal retirement or pension system, and who are receiving credit in such other system for service rendered to the City may be excluded, as to such service, from any such plan or plans.
- (b) On or after November 3, 2010, the Council, may by ordinance, exclude any officer or employee hired on or after the ordinance's effective date from any retirement plan or benefit of any retirement plan in existence on the effective date of the ordinance. Any such ordinance shall be subject to the requirements of applicable law.

*Amended at election November 2, 2010*

## **SECTION 1502. Authority to Join Other Systems.**

Subject to other provisions of this Article, the City, by and through its Council, is hereby empowered, but not required, to join or continue as a contracting agency in any retirement or pension system or systems existing or hereafter created under the laws of the State of California or of the United States of America to which municipalities and municipal officers or employees are eligible.

## **SECTION 1503. Continuance of Existing Retirement Systems.**

Any and all retirement system or systems, existing upon adoption of this Charter, for the retirement of officers or employees of the City, adopted under any law or color of any law, including but not limited to those retirement systems established by Parts 1, 2 and 4 of Chapter 9 of Article II of the San José Municipal Code, are hereby confirmed, validated and declared legally effective and shall continue until otherwise provided by ordinance. The foregoing provisions of this Section shall operate to supply such authorization as may be necessary to validate any such retirement system or systems which could have been supplied in the Charter of the City of San José or by the people of the City at the time of adoption or amendment of any such retirement system or systems. However, subject to other provisions of this Article, the Council shall at all times have the power and right to repeal or amend any such retirement system or systems, and to adopt or establish a new or different plan or plans

for all or any officers or employees, it being the intent that the foregoing sections of this Article shall prevail over the provisions of this Section.

**SECTION 1504. Minimum Benefits for Certain Members of Police and Fire Departments.**

The Council, by ordinance, shall provide the following minimum benefits for the following members of the Police and Fire Departments of the City excepting those members who are hereinafter excluded from the application of this Section.

- (a) **RETIREMENT.** An officer or employee of the Police Department or Fire Department of the City shall be entitled, upon his or her request, to be retired from City service and to receive during such retirement until his or her death a monthly retirement allowance equal to fifty percent (50%) of his or her "final compensation," hereinafter defined, if he or she:
  - (1) Completes twenty (20) years of "service," hereinafter defined, and attains, while holding such office or employment, the age of fifty-five (55) years or more; or
  - (2) Completes twenty (20) years of "service," hereinafter defined, is "disabled," as such term is hereinafter defined, while holding such office or employment, and applies for such retirement while holding such office or employment.
- (b) **CONTRIBUTIONS.** Contributions required to be made by officers and employees of the Police Department or Fire Department of the City to any retirement fund, plan or system for or because of current service or current service benefits of or for such officers or employees, in relation to and as compared with contributions made by the City for such purpose, shall not exceed the ratio of three (3) for such officers and employees to eight (8) for the City. The foregoing provision, however, does not apply to any contributions required for or because of any prior service or prior service benefits, nor to any contributions required for or because of membership in the Federal Old Age and Survivorship Insurance Program or any other Federal insurance or retirement program or because of benefits provided by any such program.
- (c) **ACTUARIAL SOUNDNESS.** Any retirement plan or system established for officers or employees of the Police or Fire Departments shall be actuarially sound; and an actuarial report thereon shall be obtained at intervals not exceeding five (5) years.
- (d) **DEFINITIONS.** As used in this Section, "service" means service as defined on the effective date of this Charter in Topic 5 of Part 3A of Chapter 9 of Article II of the San José Municipal Code; and "final compensation" means final compensation as defined on the effective date of this Charter in Topic 1 of Part

3A of Chapter 9 of Article II of the San José Municipal Code, except that with respect to officers and employees who on the effective date of this Charter are members of the Police and Fire Department Retirement Plan established by Part 3 of Chapter 9 of Article II of the San José Municipal Code "final compensation" shall be deemed to mean the average monthly pay received by any such officer or employee during the three (3) years immediately preceding his or her request for retirement. Also, as used in this Section, "disabled" means the incurrence of a disability, short of death, of permanent duration, resulting from injury or disease, which renders the officer or employee incapable of continuing to satisfactorily assume the responsibilities and perform the duties and functions of his or her office or position and of any other office or position in the same classification of offices or positions to which the City may offer to transfer him or her; provided, however, that such a disability shall be deemed to be of permanent duration if the City or any of its authorized agencies finds that such disability will continue at least until the disabled person attains the age of fifty-five (55) years.

- (e) MISCELLANEOUS. The benefits hereinabove specified are minimum only; and the Council, in its discretion, may grant greater or additional benefits. The City shall not be deemed obligated, by virtue of any of the above provisions, to continue to employ any person or persons until he or she or they qualify for or request any retirement benefits. Also, anything hereinabove to the contrary notwithstanding, any retirement allowance may be terminated and cancelled if the person otherwise entitled thereto commits treason or is convicted of a felony.
- (f) PERSONS EXCLUDED. The provisions of this Section shall not apply to any of the following persons, the same being hereby excluded from the application of the above provisions, to wit: Any and all persons hereinabove mentioned or referred to in Section 1501; officers or employees whose principal duties are those of a telephone operator, clerk, stenographer, secretary, machinist or mechanic; and any and all other officers or employees whose principal duties or functions do not fall clearly within the scope of active law enforcement or active fire fighting and prevention service even though such an officer or employee is subject to occasional call or is occasionally called upon to perform duties or functions within the scope of active law enforcement service or active fire fighting or prevention service, excepting persons employed and qualifying as police patrolmen or in equal or higher rank in the police department irrespective of the duties to which they are assigned, or persons employed and qualifying as firemen, fire fighters, hosemen or in equal or higher rank in the fire department irrespective of the duties to which they are assigned. Also, the provisions of this Section shall not apply to any person or persons who have been retired from the service of the City prior to the effective date of this Charter.

*Amended at election June 7, 1994*

## **SECTION 1505. Minimum Benefits for Officers and Employees Other Than Members of the Police or Fire Departments.**

The Council, by ordinance, shall provide the following minimum benefits for all officers and employees of the City excepting those who are hereinafter excluded from the application of this Section.

- (a) **SERVICE RETIREMENT.** An officer or employee of the City, other than those hereinafter excluded, shall be entitled, upon his or her request, to be retired from City service and to receive during such retirement until his or her death an annual retirement allowance equal to two percent (2%) of his or her "final compensation," hereinafter defined, per each year of his or her first twenty-five (25) years of service, hereinafter defined, plus one percent (1%) of such final compensation per each year of his or her service in excess of twenty-five (25) years, subject to a maximum of eighty-five percent (85%) of such final compensation, if he or she:
  - (1) Completes twenty-five (25) years or more of "service," hereinafter defined, and attains, while holding such office or employment, the age of fifty-five (55) years or more; or
  - (2) Attains, while holding such office or employment, the age of seventy (70) years or more regardless of his or her years of service.
- (b) **DISABILITY RETIREMENT.** An officer or employee of the City, other than those hereinafter excluded, who has completed ten (10) years of "service," hereinafter defined, and is "disabled," as such term is hereinafter defined, while holding such office or employment, and applies for a disability retirement while holding such office or employment, shall be entitled, upon his or her request, to be retired from City service because of such disability, and to thereafter receive, during the period of such disability, a monthly disability retirement allowance equal in amount to the monthly disability retirement allowance provided for in Topic 16 of Part 4 of Chapter 9 of Article II of the San José Municipal Code as said Topic and Chapter read on the effective date of this Charter.
- (c) **CONTRIBUTIONS.** Contributions required to be made by officers and employees of the City, other than those hereinafter excluded, to any retirement fund, system or plan for or because of current service or current service benefits of or for such officers or employees, in relation to and as compared with contributions made by the City for such purpose, shall not exceed the ratio of three (3) for such officers and employees to eight (8) for the City. The foregoing provision, however, does not apply to any contributions required for or because of any prior service or prior service benefits, nor to any contributions required for or because of membership in the Federal Old Age and Survivorship Insurance Program or any other Federal insurance or retirement program or for or because of any benefits provided by any such program.

- (d) **DEFINITIONS.** As used in this Section, “service” means all service for which an officer or employee is entitled to credit under the provisions of the retirement system established by Part 4 of Chapter 9 of Article II of the San José Municipal Code as such Part 4 reads on the effective date of this Charter; and “final compensation” means final compensation as defined on the effective date of this Charter in Topic 1 of Part 4 of Chapter 9 of Article II of the San José Municipal Code. Also, as used in this Section, “disabled” means the incurrence of a disability, short of death, resulting from injury or disease, which renders the officer or employee incapable of continuing to satisfactorily assume the responsibilities and perform the duties and functions of his or her office or position and of any other office or position in the same classification of offices or positions to which the City may offer to transfer him or her.
- (e) **MISCELLANEOUS.** The benefits hereinabove specified are minimum only; and the Council in its discretion, may grant greater or additional benefits. The City shall not be deemed obligated, by virtue of any of the above provisions, to continue to employ any person or persons until he or she or they qualify for or request any retirement benefits. Also, anything hereinabove to the contrary notwithstanding, any service or disability retirement allowance may be terminated and cancelled if the person otherwise entitled thereto commits treason or is convicted of a felony.
- (f) **PERSONS EXCLUDED.** The provisions of this Section shall not apply to any of the following persons, the same being hereby excluded from the application of the above provisions, to wit: Any and all persons mentioned or referred to in Section 1501; and any and all officers and employees in the Police Department and Fire Department of the City; any person or persons who have been retired from the service of the City prior to the effective date of this Charter; and any and all persons to whom, on the effective date of this Charter, the provisions of Topic 15A of Part 4 of Chapter 9 of Article II of the San José Municipal Code, as it reads on the effective date of this Charter, do not apply.

*Amended at election June 7, 1994*

#### **SECTION 1506. Conformance to State and Federal Law.**

Notwithstanding any other provisions of this Article, the City Council may, by ordinance, and subject to the provisions of California Government Code Section 3500 et seq., provide for the conformance of any retirement plan or plans established and maintained by the City of San José to Section 415 of the United States Internal Revenue Code or other applicable provisions of the laws of the United States or the State of California.

*Added at election June 5, 1990*



## **ARTICLE XV-A RETIREMENT**

### **SECTION 1501-A. Findings.**

The following services are essential to the health, safety, quality of life and well-being of San Jose residents: police protection; fire protection; street maintenance; libraries; and community centers (hereafter "Essential City Services").

The City's ability to provide its citizens with Essential City Services has been and continues to be threatened by budget cuts caused mainly by the climbing costs of employee benefit programs, and exacerbated by the economic crisis. The employer cost of the City's retirement plans is expected to continue to increase in the near future. In addition, the City's costs for other post employment benefits – primarily health benefits – are increasing. To adequately fund these costs, the City would be required to make additional cuts to Essential City Services.

By any measure, current and projected reductions in service levels are unacceptable, and will endanger the health, safety and well-being of the residents of San Jose.

Without the reasonable cost containment provided in this Act, the economic viability of the City, and hence, the City's employment benefit programs, will be placed at an imminent risk.

The City and its residents always intended that post employment benefits be fair, reasonable and subject to the City's ability to pay without jeopardizing City services. At the same time, the City is and must remain committed to preserving the health, safety and well-being of its residents.

By this Act, the voters find and declare that post employment benefits must be adjusted in a manner that protects the City's viability and public safety, at the same time allowing for the continuation of fair post-employment benefits for its workers.

The Charter currently provides that the City retains the authority to amend or otherwise change any of its retirement plans, subject to other provisions of the Charter.

This Act is intended to strengthen the finances of the City to ensure the City's sustained ability to fund a reasonable level of benefits as contemplated at the time of the voters' initial adoption of the City's retirement programs. It is further designed to ensure that future retirement benefit increases be approved by the voters.

### **SECTION 1502-A. Intent.**

This Act is intended to ensure the City can provide reasonable and sustainable post employment benefits while at the same time delivering Essential City Services to the residents of San Jose.

The City reaffirms its plenary authority as a charter city to control and manage all compensation provided to its employees as a municipal affair under the California Constitution.

The City reaffirms its inherent right to act responsibly to preserve the health, welfare and well-being of its residents.

This Act is not intended to deprive any current or former employees of benefits earned and accrued for prior service as of the time of the Act's effective date; rather, the Act is intended to preserve earned benefits as of the effective date of the Act.

This Act is not intended to reduce the pension amounts received by any retiree or to take away any cost of living increases paid to retirees as of the effective date of the Act.

The City expressly retains its authority existing as of January 1, 2012, to amend, change or terminate any retirement or other post employment benefit program provided by the City pursuant to Charter Sections 1500 and 1503.

#### **SECTION 1503-A. Act Supersedes All Conflicting Provisions.**

The provisions of this Act shall prevail over all other conflicting or inconsistent wage, pension or post employment benefit provisions in the Charter, ordinances, resolutions or other enactments.

The City Council shall adopt ordinances as appropriate to implement and effectuate the provisions of this Act. The goal is that such ordinances shall become effective no later than September 30, 2012.

#### **SECTION 1504-A. Reservation of Voter Authority.**

The voters expressly reserve the right to consider any change in matters related to pension and other post employment benefits. Neither the City Council, nor any arbitrator appointed pursuant to Charter Section 1111, shall have authority to agree to or provide any increase in pension and/or retiree healthcare benefits without voter approval, except that the Council shall have the authority to adopt Tier 2 pension benefit plans within the limits set forth herein.

#### **SECTION 1505-A. Reservation of Rights to City Council.**

Subject to the limitations set forth in this Act, the City Council retains its authority to take all actions necessary to effectuate the terms of this Act, to make any and all changes to retirement plans necessary to ensure the preservation of the tax status of the plans, and at any time, or from time to time, to amend or otherwise change any retirement plan or plans or establish new or different plan or plans for all or any officers or employees subject to the terms of this Act.

## **SECTION 1506-A. Current Employees.**

- (a) "Current Employees" means employees of the City of San Jose as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 1508).
- (b) Unless they voluntarily opt in to the Voluntary Election Program ("VEP," described herein), Current Employees shall have their compensation adjusted through additional retirement contributions in increments of 4% of pensionable pay per year, up to a maximum of 16%, but no more than 50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition to employees' normal pension contributions and contributions towards retiree healthcare benefits.
- (c) The starting date for an employee's compensation adjustment under this Section shall be June 23, 2013, regardless of whether the VEP has been implemented. If the VEP has not been implemented for any reason, the compensation adjustments shall apply to all Current Employees.
- (d) The compensation adjustment through additional employee contributions for Current Employees shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.
- (e) The compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.

## **SECTION 1507-A. One Time Voluntary Election Program ("VEP").**

The City Council shall adopt a Voluntary Election Program ("VEP") for all Current Employees who are members of the existing retirement plans of the City as of the effective date of this Act. The implementation of the VEP is contingent upon receipt of IRS approval. The VEP shall permit Current Employees a one time limited period to enroll in an alternative retirement program which, as described herein, shall preserve an employee's earned benefit accrual; the change in benefit accrual will apply only to the employee's future City service. Employees who opt into the VEP will be required to sign an irrevocable election waiver (as well as their spouse or domestic partner, former spouse or former domestic partner, if legally required) acknowledging that the employee irrevocably relinquishes his or her existing level of retirement benefits and has voluntarily chosen reduced benefits, as specified below.

The VEP shall have the following features and limitations:

- (a) The plan shall not deprive any Current Employee who chooses to enroll in the VEP of the accrual rate (e.g. 2.5%) earned and accrued for service prior to the VEP's effective date;

thus, the benefit accrual rate earned and accrued by individual employees for that prior service shall be preserved for payment at the time of retirement.

- (b) Pension benefits under the VEP shall be based on the following limitations:
  - (i) The accrual rate shall be 2.0% of “final compensation”, hereinafter defined, per year of service for future years of service only.
  - (ii) The maximum benefit shall remain the same as the maximum benefit for Current Employees.
  - (iii) The current age of eligibility for service retirement under the existing plan as approved by the City Council as of the effective date of the Act for all years of service shall increase by six months annually on July 1 of each year until the retirement age reaches the age of 57 for employees in the Police and Fire Department Retirement Plan and the age of 62 for employees in the Federated City Employees’ Retirement System. Earlier retirement shall be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees’ Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.
  - (iv) The eligibility to retire at thirty (30) years of service regardless of age shall increase by 6 months annually on July 1 of each year starting July 1, 2017.
  - (v) Cost of living adjustments shall be limited to the increase in the consumer price index, (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment following the effective date of the Act will be prorated based on the number of remaining months in the year after retirement of the employee.
  - (vi) “Final compensation” shall mean the average annual pensionable pay of the highest three consecutive years of service.
  - (vii) An employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).
- (c) The cost sharing for the VEP for current service or current service benefits (“Normal Cost”) shall not exceed the ratio of 3 for employees and 8 for the City, as presently set forth in the Charter. Employees who opt into the VEP will not be responsible for the payment of any pension unfunded liabilities of the system or plan.

(d) VEP Survivorship Benefits.

- (i) Survivorship benefits for a death before retirement shall remain the same as the survivorship benefits for Current Employees in each plan.
- (ii) Survivorship benefits for a spouse or domestic partner and/or child(ren) designated at the time of retirement for death after retirement shall be 50% of the pension benefit that the retiree was receiving. At the time of retirement, retirees can at their own cost elect additional survivorship benefits by taking an actuarially equivalent reduced benefit.

(e) VEP Disability Retirement Benefits.

- (i) A service connected disability retirement benefit, as hereinafter defined, shall be as follows:

The employee or former employee shall receive an annual benefit based on 50% of the average annual pensionable pay of the highest three consecutive years of service.

- (ii) A non-service connected disability retirement benefit shall be as follows:

The employee or former employee shall receive 2.0% times years of City Service (minimum 20% and maximum of 50%) based on the average annual pensionable pay of the highest three consecutive years of service. Employees shall not be eligible for a non-service connected disability retirement unless they have 5 years of service with the City.

- (iii) Cost of Living Adjustment ("COLA") provisions will be the same as for the service retirement benefit in the VEP.

**SECTION 1508-A. Future Employees – Limitation on Retirement Benefits – Tier 2.**

To the extent not already enacted, the City shall adopt a retirement program for employees hired on or after the ordinance enacting Tier 2 is adopted. This retirement program – for new employees – shall be referred to as "Tier 2."

The Tier 2 program shall be limited as follows:

- (a) The program may be designed as a "hybrid plan" consisting of a combination of Social Security, a defined benefit plan and/or a defined contribution plan. If the City provides a defined benefit plan, the City's cost of such plan shall not exceed 50% of the total cost of the Tier 2 defined benefit plan (both normal cost and unfunded liabilities). The City may contribute to a defined contribution or other retirement plan only when and to the extent the total City contribution does not exceed 9%. If the City's share of a Tier 2 defined benefit

plan is less than 9%, the City may, but shall not be required to, contribute the difference to a defined contribution plan.

(b) For any defined benefit plan, the age of eligibility for payment of accrued service retirement benefits shall be 65, except for sworn police officers and firefighters, whose service retirement age shall be 60. Earlier retirement may be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.

(c) For any defined benefit plan, cost of living adjustments shall be limited to the increase in the consumer price index (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment will be prorated based on the number of months retired.

(d) For any defined benefit plan, "final compensation" shall mean the average annual earned pay of the highest three consecutive years of service. Final compensation shall be base pay only, excluding premium pays or other additional compensation.

(e) For any defined benefit plan, benefits shall accrue at a rate not to exceed 2% per year of service, not to exceed 65% of final compensation.

(f) For any defined benefit plan, an employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).

(g) Employees who leave or have left City service and are subsequently rehired or reinstated shall be placed into the second tier of benefits (Tier 2). Employees who have at least five (5) years of service credit in the Federated City Employees' Retirement System or at least ten (10) years of service credit in the Police and Fire Department Retirement Plan on the date of separation and who have not obtained a return of contributions will have their benefit accrual rate preserved for the years of service prior to their leaving City service.

(h) Any plan adopted by the City Council is subject to termination or amendment in the Council's discretion. No plan subject to this section shall create a vested right to any benefit.

#### **SECTION 1509-A. Disability Retirements.**

(a) To receive any disability retirement benefit under any pension plan, City employees must be incapable of engaging in any gainful employment for the City, but not yet eligible to retire (in terms of age and years of service). The determination of qualification for a disability retirement shall be made regardless of whether there are other positions available at the time a determination is made.

(b) An employee is considered "disabled" for purposes of qualifying for a disability retirement, if all of the following is met:

- (i) An employee cannot do work that they did before; and
  - (ii) It is determined that
    - 1) an employee in the Federated City Employees' Retirement System cannot perform any other jobs described in the City's classification plan because of his or her medical condition(s); or
    - 2) an employee in the Police and Fire Department Retirement Plan cannot perform any other jobs described in the City's classification plan in the employee's department because of his or her medical condition(s); and
  - (iii) The employee's disability has lasted or is expected to last for at least one year or to result in death.
- (c) Determinations of disability shall be made by an independent panel of medical experts, appointed by the City Council. The independent panel shall serve to make disability determinations for both plans. Employees and the City shall have a right of appeal to an administrative law judge.
- (d) The City may provide matching funds to obtain long term disability insurance for employees who do not qualify for a disability retirement but incur long term reductions in compensation as the result of work related injuries.
- (e) The City shall not pay workers' compensation benefits for disability on top of disability retirement benefits without an offset to the service connected disability retirement allowance to eliminate duplication of benefits for the same cause of disability, consistent with the current provisions in the Federated City Employees' Retirement System.

#### **SECTION 1510-A. Emergency Measures to Contain Retiree Cost of Living Adjustments.**

If the City Council adopts a resolution declaring a fiscal and service level emergency, with a finding that it is necessary to suspend increases in cost of living payments to retirees the City may adopt the following emergency measures, applicable to retirees (current and future retirees employed as of the effective date of this Act):

- (a) Cost of living adjustments ("COLAs") shall be temporarily suspended for all retirees in whole or in part for up to five years. The City Council shall restore COLAs prospectively (in whole or in part), if it determines that the fiscal emergency has eased sufficiently to permit the City to provide essential services protecting the health and well-being of City residents while paying the cost of such COLAs.

- (b) In the event the City Council restores all or part of the COLA, it shall not exceed 3% for Current Retirees and Current Employees who did not opt into the VEP and 1.5% for Current Employees who opted into the VEP and 1.5% for employees in Tier 2.

#### **SECTION 1511-A. Supplemental Payments to Retirees.**

The Supplemental Retiree Benefit Reserve ("SRBR") shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets.

#### **SECTION 1512-A. Retiree Healthcare.**

- (a) **Minimum Contributions.** Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.
- (b) **Reservation of Rights.** No retiree healthcare plan or benefit shall grant any vested right, as the City retains its power to amend, change or terminate any plan provision.
- (c) **Low Cost Plan.** For purposes of retiree healthcare benefits, "low cost plan" shall be defined as the medical plan which has the lowest monthly premium available to any active employee in either the Police and Fire Department Retirement Plan or Federated City Employees' Retirement System.

#### **SECTION 1513-A. Actuarial Soundness (for both pension and retiree healthcare plans).**

- (a) All plans adopted pursuant to the Act shall be subject to an actuarial analysis publicly disclosed before adoption by the City Council, and pursuant to an independent valuation using standards set by the Government Accounting Standards Board and the Actuarial Standards Board, as may be amended from time to time. All plans adopted pursuant to the Act shall: (i) be actuarially sound; (ii) minimize any risk to the City and its residents; and (iii) be prudent and reasonable in light of the economic climate. The employees covered under the plans must share in the investment, mortality, and other risks and expenses of the plans.
- (b) All of the City's pension and retiree healthcare plans must be actuarially sound, with unfunded liabilities determined annually through an independent audit using standards set by the Government Accounting Standards Board and the Actuarial Standards Board. No benefit or expense may be paid from the plans without being actuarially funded and explicitly recognized in determining the annual City and employee contributions into the plans.
- (c) In setting the actuarial assumptions for the plans, valuing the liabilities of the plans, and determining the contributions required to fund the plans, the objectives of the City's retirement boards shall be to:



- (i) achieve and maintain full funding of the plans using at least a median economic planning scenario. The likelihood of favorable plan experience should be greater than the likelihood of unfavorable plan experience; and
  - (ii) ensure fair and equitable treatment for current and future plan members and taxpayers with respect to the costs of the plans, and minimize any intergenerational transfer of costs.
- (d) When investing the assets of the plans, the objective of the City's retirement boards shall be to maximize the rate of return without undue risk of loss while having proper regard to:
- (i) the funding objectives and actuarial assumptions of the plans; and
  - (ii) the need to minimize the volatility of the plans' surplus or deficit and, by extension, the impact on the volatility of contributions required to be made by the City or employees.

#### **SECTION 1514-A. Savings.**

In the event Section 1506(b) is determined to be illegal, invalid or unenforceable as to Current Employees (using the definition in Section 1506(a), then, to the maximum extent permitted by law, an equivalent amount of savings shall be obtained through pay reductions. Any pay reductions implemented pursuant to this section shall not exceed 4% of compensation each year, capped at a maximum of 16% of pay.

#### **SECTION 1515-A. Severability.**

(a) This Act shall be interpreted so as to be consistent with all federal and state laws, rules and regulations. The provisions of this Act are severable. If any section, sub-section, sentence or clause ("portion") of this Act is held to be invalid or unconstitutional by a final judgment of a court, such decision shall not affect the validity of the remaining portions of this amendment. The voters hereby declare that this Act, and each portion, would have been adopted irrespective of whether any one or more portions of the Act are found invalid. If any portion of this Act is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Act which can be given effect. In particular, if any portion of this Act is held invalid as to Current Retirees, this shall not affect the application to Current Employees. If any portion of this Act is held invalid as to Current Employees, this shall not affect the application to New Employees. This Act shall be broadly construed to achieve its stated purposes. It is the intent of the voters that the provisions of this Act be interpreted or implemented by the City, courts and others in a manner that facilitates the purposes set forth herein.

(b) If any ordinance adopted pursuant to the Act is held to be invalid, unconstitutional or otherwise unenforceable by a final judgment, the matter shall be referred to the City Council

for determination as to whether to amend the ordinance consistent with the judgment, or whether to determine the section severable and ineffective.

*Added at election June 5, 2012*

## **ARTICLE XVI ELECTIONS**

### **SECTION 1600. Municipal Elections.**

All municipal elections shall be held in accordance with the following:

- (a) **REGULAR MUNICIPAL ELECTIONS.** A Regular Municipal Election is either a regularly scheduled Primary or Run-off Municipal Election. Such elections shall be held every two years, with the election for Mayor and for the odd numbered Council Districts being every four (4) years beginning with 1994, and the election for the even numbered Council Districts being every four (4) years beginning in 1996. Each member's term shall commence on the first day of January next following, and end on the last day of December in the fourth calendar year succeeding, the date of the member's election. A regularly scheduled Primary Election shall be held on the same date that the State of California holds its Direct Primary Election. A Run-off Municipal Election shall be held on the same date the State of California holds its Statewide General Election.
- (b) **GENERAL ELECTIONS.** Elections which are held simultaneously in all districts of the City, whether municipal, county or state elections are referred to as General Elections.
- (c) **SPECIAL MUNICIPAL ELECTIONS.** Special Municipal Elections are elections scheduled pursuant to Section 1601. The dates of any Special Municipal Election shall be set by resolution.
- (d) **RUN-OFF QUALIFICATION.** The two candidates who poll the greatest number of votes for office in the Primary Municipal Election shall be the only candidates whose names shall appear on the ballot as candidates for such office at the following Run-off Municipal Election.
- (e) **TIES.** Anything elsewhere to the contrary notwithstanding, all ties in any municipal election shall be decided by lot during open meeting of the Council, under the direction of the Council.
- (f) **DEATH OF A CANDIDATE.** If a candidate dies after the filing of nomination papers for the primary election, the deceased candidate is treated as a candidate for all election purposes. If the deceased candidate is elected, the office will be





## Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jennifer Schembri  
Jennifer A. Maguire

**SUBJECT:** SEE BELOW

**DATE:** July 24, 2015

Approved

Date

7/24/15

**SUBJECT: APPROVAL OF THE TERMS OF THE ALTERNATIVE PENSION REFORM SETTLEMENT FRAMEWORK AGREEMENT CONCERNING THE LITIGATION ARISING OUT OF MEASURE B WITH THE SAN JOSE POLICE OFFICERS' ASSOCIATION (SJPOA) AND THE SAN JOSE FIRE FIGHTERS, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 230 (IAFF, LOCAL 230) AND RELATED APPROPRIATION ACTIONS**

### RECOMMENDATION

It is recommended that the City Council approve the following actions:

- a) Approval of the terms of the Alternative Pension Reform Settlement Framework agreement between the City and the San Jose Police Officers' Association (SJPOA) and San Jose Fire Fighters, International Association of Fire Fighters, Local 230 (IAFF, Local 230).
- b) Authorize the City Manager to negotiate and execute a Tripartite Retirement Memorandum of Agreement between the City, the SJPOA, and IAFF, Local 230.
- c) Adopt the following 2015-2016 Appropriation Ordinance amendments in the General Fund:
  - i. Establish a City-Wide Measure B Settlement appropriation to the City Manager's Office in the amount of \$1,500,000; and
  - ii. Decrease the Fiscal Reform Plan Implementation Reserve in the amount of \$1,500,000.

### OUTCOME

Approval of the terms of the Alternative Pension Reform Settlement Framework agreement, and authorize the City Manager to negotiate and execute the Tripartite Retirement Memorandum of Agreement between the City, the SJPOA and IAFF, Local 230.

## **BACKGROUND**

The City of San Jose is currently in litigation with the San Jose Police Officers' Association (SJPOA), the San Jose Fire Fighters, International Association of Fire Fighters, Local 230 (IAFF, Local 230), and other employee and retiree groups over the pension reform ballot measure known as Measure B. Measure B was approved by the voters on June 5, 2012, and has subsequently been the subject of various forms of litigation. In an effort to settle these cases for budget stability and to provide certainty to the City's workforce, the City Council directed the City Administration to make any and all reasonable efforts to reach and implement a settlement this year.

In April 2015, settlement discussions with the SJPOA and IAFF, Local 230 commenced and, on or about July 15, 2015, the City, the SJPOA and IAFF, Local 230 reached an agreed upon settlement on an Alternative Pension Reform Settlement Framework (Framework). The attached Framework presents a path toward the settlement of litigation over Measure B. The settlement framework is subject to a final overall global settlement with all parties related to Measure B litigation. It is also contingent on the City and the SJPOA reaching agreement on a successor Memorandum of Agreement (MOA). Those discussions are currently ongoing.

The City Council has not yet made a decision regarding the path by which to implement the framework, such as through a 2016 ballot measure to modify Measure B or through the quo warranto process to remove the language attributable to Measure B from the City Charter. The City Council will consider that issue at a subsequent meeting.

In summary, the Alternative Pension Reform Settlement Framework will:

- Settle significant litigation with SJPOA and IAFF, Local 230 with the Framework's alternative strategy to pension reform. This agreement should avoid further litigation costs with these groups.
- Over the next 30+ years, provide savings of approximately \$1.7 billion from the revised Tier 2 compared to Tier 1 (\$1.15 billion), the revised retiree healthcare program compared to the current retiree healthcare program (\$244.2 million), and from the elimination of the SRBR (\$270 million).
- Modify Tier 2 pension benefits for sworn employees to levels similar to other Bay Area agencies to attract and retain sworn employees, providing a competitive Tier 2 pension benefit at a reduced cost. The new Tier 2 benefit has several differences from the California Public Employees' Retirement System (CalPERS) second tier benefit (the Public Employees' Pension Reform Act, or PEPRA) that reduce costs. For example, the accrual rate is back loaded so that the more years of service an employee has, the higher accrual rate they receive, which is a significant difference from the Tier 2 benefit in other agencies and reduces the cost of the Tier 2 benefit significantly. This also incentivizes longevity. This Tier 2 benefit also has a maximum benefit of 80%, while other agencies have no maximum benefit.

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- Allow Tier 1 employees who left the City and either subsequently have returned or return in the future to return into the Tier 1 benefit, incentivizing employees who have left to return to City service.
- Preserve 50/50 risk sharing with employees through the cost sharing of a 50/50 split in normal costs and any future unfunded liability associated with the Tier 2 benefit. In other agencies, the cost sharing is just 50/50 of normal cost.
- Close the retiree healthcare defined benefit plan to new and Tier 2 employees, and allow an opt-out for Tier 1 employees, into a defined contribution Voluntary Employee Beneficiary Association (VEBA) subject to legal and IRS approval. The VEBA has no employer contribution and is completely funded by the employee. Because the VEBA has a lower contribution than the existing defined benefit plan, it reduces retiree healthcare costs for sworn employees and increases their take home pay, while reducing the City's liability for retiree healthcare.
- Implement a new lowest cost healthcare plan in order to reduce retiree healthcare costs.
- Allow retirees with alternate coverage to receive 25% credit towards future premiums instead of being covered by the City in order to reduce costs (similar to "in lieu" programs commonly used for active employees).
- Reinstate the Police and Fire Retirement Plan's previous definition of disability which is comparable to other agencies.
- Create an Independent Medical Panel appointed by the Retirement Board which will determine disability eligibility instead of the Retirement Board. The agreement creates a process and minimum qualifications for the Independent Medical Panel.
- Create a workers' compensation offset to disability retirements received by Tier 2 employees represented by the SJPOA and IAFF, Local 230.
- Create a committee for the City and the SJPOA and IAFF, Local 230 to continue discussions on wellness and workers' compensation to streamline the process and reduce costs.
- Continue the elimination of the Supplemental Retiree Benefit Reserve (SRBR) from the Police and Fire Retirement Plan, solidifying \$9 million in General Fund savings.
- Allow for continued discussions regarding the following provisions of Measure B not addressed in this agreement:
  - Actuarial soundness
  - Voters' ability to vote on any benefit increases

The below chart depicts the realized savings from Measure B and retirement reform as shown to the Council during the January 20, 2015, Study Session regarding General Fund Structural Budget Deficit History and Service Restoration Priorities and Strategies:

<b>Retirement Reform Estimate</b>	<b>GF Savings</b>
<b>Implemented</b>	
SRBR Elimination	\$13 M
Retiree Healthcare Changes (lowest cost plan)	\$7 M
New Tier 2 Retirement Plans	\$5 M
<b>Subtotal Implemented</b>	<b>\$25 M</b>

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The Settlement Framework preserves these savings, including \$9 million from the continued SRBR elimination for the Police and Fire Retirement Plan (the remaining \$4 million is attributable to the Federated Retirement System). Additionally, the new lowest cost plan saves additional retiree medical funds (including an estimated \$4.6 million in the first year) while the prior savings continue. The exception is the increased cost for the revised Tier 2 benefit. In the first year of the revised Tier 2 Police and Fire pension benefit, the cost will increase from the current Tier 2 by \$400,000.

The Alternative Pension Reform Settlement Framework was ratified by IAFF, Local 230 on July 21, 2015, and is pending ratification by the SJPOA, which will notify the City of the ratification results as soon as ratification is completed.

### **ANALYSIS**

A complete copy of the Alternative Pension Reform Settlement Framework is attached (Attachment A). The following is a summary of the key provisions of the Framework applicable to employees represented by the SJPOA and IAFF, Local 230.

#### **Tripartite Retirement Memorandum of Agreement**

A Tripartite agreement between the City, the SJPOA and IAFF, Local 230, will be finalized to memorialize all agreements related to retirement.

The term of the Tripartite MOA shall be July 1, 2015 – June 30, 2025.

#### **Revised Tier 2**

In order to address recruitment and retention issues, this agreement modestly increases the Tier 2 benefits; however, the City's portion of the Normal Cost will go from 11.2% to an estimated 14.7%, which is still drastically lower than the City's portion of the Normal Cost for Tier 1, which is 31.6%.

Employees hired on or after the effective date of the ordinance implementing these changes will be subject to the following pension benefits. Any current Tier 2 members will be retroactively placed in the revised Tier 2.

##### **Pension Formula Accrual Rate**

Years: 1-20	2.4%
21-25	3.0%
<u>26+</u>	<u>3.4%</u>

##### **Maximum Benefit**

The above accrual rate is subject to a maximum of 80% of final compensation.

##### **Final Compensation**

Average annual earned pay of the highest three consecutive years of service. Final Compensation will include base pay, holiday in lieu pay, anti-terrorism training pay, POST pay, and base FLSA pay.

**Revised Tier 2**  
**(cont'd)**

**Minimum Service**

Tier 2 employees shall be eligible for a service retirement after earning five (5) years of retirement service credit and meeting the age requirement.

**Normal Age of Retirement**

Employees shall be eligible to retire at age 57 with at least five (5) years of retirement service credit.

Tier 2 employees have the ability to retire at age 50 with a 7% reduction per year below age 57, prorated to the closest month.

**Retiree Cost of Living Adjustment (COLA)**

Plan members shall receive a cost of living adjustment limited to the increase in the consumer price index, or CPI (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 2.0% per fiscal year. The first COLA will be prorated based on the number of months retired.

**No Retroactive Pension Increases or Decreases**

Any changes in pension benefits will be on a prospective basis only.

**Current Tier 2 Employees**

The Police and Fire employees currently in Tier 2 will be retroactively moved to this revised Tier 2 benefit.

Any costs, including unfunded liabilities associated with moving the current Tier 2 employees into the revised structures, will be shared between the employees and the City on a 50/50 basis with no ramp up and amortized as a separate liability over a minimum of 16 years.

**Vesting Language**

The City will remove the language currently contained in City Charter Section 1508-A referring to limiting vesting of benefits.

**Cost Sharing**

Employees and the City will share equally in all costs of Tier 2 to the pension plan, including all normal costs and unfunded liabilities.

If an unfunded liability exists for Tier 2 members, employees will contribute based on a “ramp up” to paying 50% of the liability. In years where an unfunded liability exists, the member contribution will be increased by increments of 0.33% per year until such time that the contribution associated with the unfunded liability is shared 50/50. Until such time, the City will pay the balance of the contribution associated with the unfunded liability of the Tier 2 plan.



**Revised Tier 2**  
**(cont'd)**

For example, if the unfunded liability contribution rate of the Police and Fire Tier 2 plan is 2% for three years, the following ramp-up schedule will occur:

Year	Total UAL Rate	City UAL Rate	Employee UAL Rate
1	2.00%	1.67%	.33%
2	2.00%	1.34%	.66%
3	2.00%	1.01%	.99%

**Disability Benefits**

*Service Connected*

Plan members eligible for a service connected disability retirement benefit shall receive an annual benefit equal to the greater of 50% of final compensation, a service retirement allowance if the member is eligible, or an actuarially reduced factor, determined by the plan's actuary, for each quarter year that the member's service age is less than 50 years, multiplied by the number of years of safety service subject to the applicable formula, if not eligible for a service retirement.

*Non-Service Connected*

Plan members eligible for a non-service connected disability retirement benefit shall receive an annual benefit equal to the either 1.8% per year if the member is less than age 50 or the amount of the service pension benefit if the member is older than age 50.

**Survivorship Benefits**

The survivorship benefits for Tier 2 shall be the same as the survivorship benefits for Tier 1; however, these benefits will be reduced to reflect the 80% pension benefit maximum.

**Rehired Employees/New Hires From Outside Agencies**

Former City Tier 1 sworn employees who have been rehired since the implementation of the Police and Fire Tier 2 plans, or rehired after the effective date of this agreement, will return to Tier 1. Any lateral hires that are defined as "Classic" members under the Public Employees' Pension Reform Act (PEPRA), regardless of the tier of their previous employer, will also become Tier 1 members. Employees who are considered "new" employees under PEPRA will enter the revised Tier 2 plan.

The costs associated with the transition of current Tier 2 employees into Tier 1 will be shared between the employees and the City on a 50/50 basis with no ramp up. This will be a separate liability amortized over 16 years.

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**Revised Tier 2**  
**(cont'd)****Service Credit Purchases**

Tier 2 members shall be eligible to make the same service credit purchases as Tier 1, with the exception of purchases of service credit related to suspension. All costs associated with service credit purchases will be paid for by the Tier 2 member.

**Actuarial Assumptions**

The City, the SJPOA and IAFF, Local 230 will work with their respective actuaries to jointly request that the Police and Fire Department Retirement Plan Board of Administration and its actuary carefully consider the new Tier 2 actuarial assumptions. In particular, the parties will request that the Board and its actuary incorporate assumptions similar to the CalPERS PEPRA rates of retirement, which are expected to reduce the cost of the benefit.

**Tier 2 Costing**

The below chart indicates the difference in the current Tier 1 and Tier 2 pension normal cost rates for Fiscal Year 2015-2016 in comparison to the revised Tier 2 estimated normal cost based on calculations by the City's actuary. The retirement board's actuary, Cheiron, will be asked to calculate the final contribution rates. The City's actuary, Bartel Associates, valued the revised Tier 2 benefit using two methods: Cheiron's current Tier 2 retirement rates and the retirement rates used by CalPERS for a similar pension formula. Please refer to Attachment B.

	Current Tier 1	Current Tier 2	Agreement Tier 2 Formula using	
			Cheiron Tier 2 Retirement Rates	CalPERS Retirement Rates for Similar Formula
Total	43.0%	22.4%	30.5%	29.4%
City	31.6%	11.2%	15.25%	14.7%
Member	11.4%	11.2%	15.25%	14.7%

The City's actuary estimates that the savings between the revised Tier 2 benefit and the current Tier 1 normal cost would be \$1.15 billion over 30 years.

**Retiree**  
**Healthcare**

The current retiree healthcare defined benefit program will be closed to new employees and current Tier 2 employees.

**Voluntary Employee Beneficiary Association (VEBA)**

The City will implement a defined contribution retiree healthcare benefit in the form of a VEBA.

New and current Tier 2 members shall contribute 4% of base pay to the VEBA. There will be no City contribution into the VEBA.

**Retiree**  
**Healthcare**  
**(cont'd)**

**New Lowest Cost Medical Plan**

Effective after the final overall agreement is reached, the Kaiser NCAL 4307 Plan shall be available to all active sworn employees, in addition to the existing plan options for active sworn employees. Currently, the lowest cost medical plan for Police and Fire employees is the Kaiser \$25 co-pay plan. This plan will reduce the total premium payment by an estimated \$199 for single coverage and an estimated \$496 for family coverage per month. The Kaiser 4307 Plan has a \$3000 deductible and qualifies for a Health Savings Account (HSA).

The current cost sharing arrangement of the City paying 85% of the lowest cost non-deductible HMO plan will continue for active employees but active employees have the option of selecting the new lowest cost healthcare plan. For retiree healthcare, the retirement plan pays 100% of the lowest cost plan available to active employees. The Kaiser 4307 Plan will be the lowest cost plan available to active employees after implementation.

The lowest cost plan for any future or current retirees will be set so that any plan may not be lower than the "silver" level of health insurance as specified by the current Affordable Care Act as of the date of the agreement. The "silver" plans are estimated to be 70% of healthcare expenses.

**Tier 1 Opt-Out**

Upon legal and IRS verification, Tier 1 employees will be offered a one-time, irrevocable election to opt-out of the current defined benefit retiree healthcare plan and instead be placed in the VEBA. Tier 1 employees will be offered individual, independent financial counseling to assist with their decision.

If legally permissible, deferred vested rehires will also be offered a one-time irrevocable opt-out upon return to City employment.

Tier 1 members who choose to opt-out will contribute 5% of base pay to the VEBA. Tier 1 members who elect to remain in the defined benefit plan will contribute 8% to the defined benefit plan. The difference between the 5% contribution to the VEBA and the 8% contribution to the plan will be taxable to the employee.

The City will contribute the amount necessary (when combined with the mandatory employee contributions) to ensure the defined benefit plan receives the full Annual Required Contribution (ARC). City contributions will be expressed as a percentage of payroll for all bargaining unit members and the City will contribute based on all members (including Tier 2). If the City portion reaches 11% of payroll, the City may decide to contribute a maximum of 11%.

**Retiree**  
**Healthcare**  
**(cont'd)**

If, subsequent to IRS approval, a Tier 1 employee elects to opt-out of the defined benefit retiree healthcare plan, they will receive from the 115 retiree healthcare trust an amount estimated to equal the employee only contributions into the retiree healthcare plan, with no interest included. These funds will be placed in the employee's VEBA.

The City will be seeking an IRS private letter ruling regarding the funding of the VEBA through the 115 trust. Should the City not receive a favorable ruling from the IRS or the amounts of funds returned to those employees who opt-out exceeds the amount of funds in the VEBA, the parties will meet and confer over the opt-out and whether or not it can be implemented through other means.

**Medicare Part A and B Enrollment**

A member of the Police and Fire Department Retirement Plan shall be required to enroll in Medicare Part A and B based on federal regulations and insurance provider requirements.

**Retiree Healthcare In-Lieu Premium Credit**

At the beginning of each plan year, a qualified retiree may choose to forego the defined benefit retiree healthcare plan and instead receive a 25% credit for the monthly premium of the lowest cost healthcare plan and dental plan. This credit may only be used for future City retiree healthcare premiums. Retirees may choose this option at the beginning of the plan year or upon a qualifying event. Retirees must verify dependent enrollment on an annual basis if they are receiving a credit for any tier other than single.

Accumulated credits that are never used by the retiree or survivor/beneficiary are forfeited. There is no cap on the amount of credit accumulated.

**Catastrophic Disability Healthcare Program (CDHP)**

VEBA members who receive a service-connected disability will be eligible for 100% of the single premium for the lowest cost healthcare plan until the member is eligible for Medicare (usually age 65). The member must not be eligible for an unreduced service retirement, must exhaust the funds in the VEBA before becoming eligible for the CDHP, and submit an affidavit on an annual basis verifying the member does not have employment that offers healthcare. A member may re-enroll in the CDHP if they lose employment that offers healthcare coverage before Medicare eligibility.

**30 Year Fresh Start Amortization**

The City will continue considering whether to recommend that the retirement boards use a 30-year fresh start amortization for the Police and Fire retiree healthcare actuarial valuation.

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**Retiree  
Healthcare  
(cont'd)****Retiree Healthcare Costing**

The City's actuary estimates that the changes in the lowest cost healthcare and the opt-out will lower the actuarial liability by 21%. The actuary assumed that 50% of those at younger ages with shorter service grading to 0% of those at older ages with longer service currently in the defined benefit plan will opt-out. Please refer to Attachment C.

	Current Valuation	With Kaiser 4307 Plan	With Opt Out	Total \$ Impact	Total % Impact
Active	\$ 208.4	\$ 180.7	\$ 135.8	\$ (72.6)	-35%
Inactive	347.4	305.8	305.8	(41.5)	-12%
Total	555.7	486.5	441.6	(114.1)	-21%

The City's actuary estimates that, over the next 35 years, the total dollar savings between the existing retiree healthcare plan and the new plan (without the fresh start) would be \$244.2 million. It is important to note that the actual cost impact will be determined by the retirement board's actuary.

**Disability  
Definition  
and Process**

The City will reinstate the previous disability retirement definition for all sworn employees.

**Disability Process Deadlines**

Applications for disability retirement must be filed within one month of separation from City service rather than the previous one year time period. Exceptions contained in the Municipal Code will still apply. The applicants must submit medical paperwork including, but not limited to, the initial nature of the disability and current medical treatments. The medical paperwork must be filed within one year of separation unless the independent medical review panel grants a longer deadline due to extenuating circumstances. Application must not be deferred past four (4) years of the date of application unless the independent medical review panel grants a longer deadline due to extenuating circumstances.

**Disability Hearing Process**

The Police and Fire Retirement Board will appoint an independent medical review panel of three (3) experts to grant or deny disability retirement applications. The panel will make decisions based on a majority vote. The independent medical review panel may decide, based on its own motion or request from a member, to determine if a disability retirement recipient is capable of returning to work.

The appointment shall be approved by a vote of six (6) of nine (9) trustees.

**Disability**  
**Definition**  
**and Process**  
**(cont'd)**

Each member of the independent medical review panel will serve four year terms and meet the following minimum qualifications:

- I. 10 years of practice after completion of residency.
- II. Currently in practice or retired.
- III. Not a prior or current City employee.
- IV. No prior experience providing the City or retirement boards with medical services. The exception shall be prior service as an independent panel member seeking reappointment.
- V. No prior experience as a qualified medical examiner or agreed medical evaluator.
- VI. Varying types of medical practice experience.

**Administrative Law Judge (ALJ)**

Decisions to grant or deny a disability retirement made by the independent medical review panel may be appealed to an ALJ. Either the applicant or the City has forty-five (45) days to appeal the decision made by the independent medical review panel. The appeal hearing must happen within ninety (90) days of the notice of appeal, unless a later date is mutually agreed upon. The ALJ decision will be considered final.

**Modified Duty (SJPOA – Article 39)**

The City and the SJPOA will discuss the modified duty positions during collective bargaining. Until the parties agree, the number of modified duty positions will increase to 30. On an annual basis, the independent medical review panel will review the status of the employees on modified duty until the program is modified.

**Workers' Compensation Reform**

Tier 2 members will have the Federated workers' compensation language as currently contained in the Municipal Code apply to qualifying disability retirement allowances to a maximum aggregate total of \$10,000 per Tier 2 employee.

The parties will convene a Public Safety Wellness Improvement Committee to discuss wellness and workers' compensation in order to streamline the process, reduce costs, decrease the number of work-related injuries through prevention, and expedite the return to work of those injured or ill.

**Supplement**  
**Retiree Benefit**  
**Reserve**  
**(SRBR)**

The elimination of the SRBR will continue.

**Guaranteed Purchasing Power (GPP)**

The SRBR will be replaced with a Guaranteed Purchasing Power provision for all current and future Tier 1 retirees, but the GPP will be applied prospectively after its implementation. The GPP is designed to maintain the monthly allowance for Tier 1 retirees at 75% of purchasing power effective the date of the retiree's retirement.

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**Supplemental**  
**Retiree Benefit**  
**Reserve**  
**(SRBR)**  
**(cont'd)**

A retiree's pension benefit will be recalculated annually to determine if the allowance has kept up with inflation per the CPI-U. The actual benefit will be compared to what would have been required to maintain the same purchasing power at the time of retirement. If the benefit for Tier 1 retirees falls below 75%, a separate check will be issued to make up the difference, beginning in February 2016.

The number of Tier 1 retirees who currently fall below 75% purchasing power is approximately 55.

The SJPOA and IAFF, Local 230 will have a right to tender defense of the litigation to the City in the event of litigation brought forward by a retired member or members of the SJPOA or IAFF, Local 230, against SJPOA or IAFF, Local 230 challenging this settlement framework agreement.

**SRBR Costing**

By continuing the elimination of the SRBR, the City will solidify the \$9 million General Fund savings already achieved by the City as a result of Measure B. Assuming the savings of \$9 million continues annually, using simple arithmetic, the elimination of the SRBR is estimated to result in an approximate savings of \$270 million over 30 years. It should be noted that the calculation of the \$9 million was based on the information available to the City when the SRBR was initially eliminated. Please refer to Attachment D.

**Memorandum**  
**of Agreement**

This Settlement Framework agreement is contingent on reaching a successor MOA with the SJPOA.

**Attorneys'**  
**Fees**

To settle attorneys' fee related to Measure B legal matters, the City shall pay the SJPOA and IAFF, Local 230, \$1.5 million within thirty (30) days of the settlement framework agreement being approved by City Council.

There will be final and binding arbitration before a JAMS judge to resolve any additional claims for attorneys' fees related to Measure B litigation (including administrative proceedings) and resolution.

**Quo Warranto**

In the Mayor's March 11, 2015, letter to all bargaining units sent on behalf of the City Council, the direction was that a quo warranto process would be used to replace the provisions of Measure B, contingent on the following conditions being met:

**Quo Warranto**  
**(cont'd)**

1. Agreement on an alternative strategy to implement pension reform and replace Measure B. Such agreement must achieve all reform objectives that the Council deems necessary to the public interest, including improved city services, and the sustainability of our retirement plans.
2. The quo warranto strategy is legally viable and can be carried out on a timeline that would allow the Council sufficient time to pursue a 2016 ballot measure should a quo warranto strategy fail.
3. All bargaining units have agreed to pursue the quo warranto strategy.
4. The Council is satisfied that the quo warranto strategy does not impair the public interest.

Should an agreement with the Federated litigation plaintiffs and Retirees' Association not be reached or the quo warranto process does not permit the replacement of Measure B, the SJPOA and IAFF, Local 230 will stay all Measure B litigation and permit this agreement to appear on a November 2016 ballot as a measure to replace Measure B.

Currently, no decision has been made on the process by which to enact this agreement. This information will be brought forward on a later date. If the agreement is implemented through the Quo Warranto process, the City and the bargaining units will discuss the City Charter provisions requiring voter approval of benefits and actuarial soundness for consideration in a November 2016 ballot measure.

**EVALUATION AND FOLLOW-UP**

The City, the Federated bargaining units, and the Federated Retirees' Association are continuing settlement discussions related to litigation arising out of Measure B. The goal of these discussions is to reach a global settlement with all parties to the litigation. The City Administration will continue to keep the Council apprised of any updates related to this matter.

Once a decision has been made on the recommended process by which to enact this Settlement Framework agreement, the City Administration will bring it forward to City Council for consideration.

**PUBLIC OUTREACH/INTEREST**

This memorandum will be posted on the City's website in advance of the August 11, 2015, City Council Agenda.



HONORABLE MAYOR AND CITY COUNCIL

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### **COORDINATION**

This memorandum was coordinated with the City Attorney's Office and the City Manager's Budget Office.

### **COST SUMMARY/IMPLICATIONS**

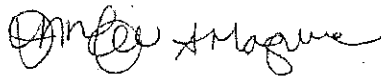
Appropriation actions in the amount of \$1.5 million, funded from the Fiscal Reform Plan Implementation Reserve, are recommended as part of this memorandum to pay attorney's fees related to the settlement of Measure B. The cost/savings estimates of each element of the framework are noted above and in the attachments, and it is estimated that, over 30+ years, the City will realize savings of approximately \$1.7 billion from the revised Tier 2 compared to Tier 1 (\$1.15 billion), the revised retiree healthcare program compared to the current retiree healthcare program (\$244.2 million), and from the elimination of the SRBR (\$270 million). With the exception of the SRBR, it is important to note that these estimates were done by the City's actuary and actual costs/savings will be determined by the Retirement Board's actuary.

### **CEQA**

Not a Project, File No. PP10-069(b), Personnel Related Decisions.



JENNIFER SCHEMBRI  
Director of Employee Relations



JENNIFER A. MAGUIRE  
Senior Deputy City Manager / Budget Director

For questions please contact Jennifer Schembri, Director of Employee Relations, at (408) 535-8150.

Attachment A – Alternative Pension Reform Settlement Framework Agreement  
Attachment B – Letter from John Bartel dated July 23, 2015 on Tier 2 Costing  
Attachment C – Letter from John Bartel dated July 23, 2015 on Retiree Healthcare Costing  
Attachment D – Letter from John Bartel dated July 23, 2015 on Guaranteed Purchasing Power

## **ALTERNATIVE PENSION REFORM SETTLEMENT FRAMEWORK**

### **(Evidence Code Section 1152)**

#### **Settlement Discussion Framework Language**

*The City of San Jose, the San Jose Fire Fighters, IAFF Local 230, and the San Jose Police Officers' Association have engaged in settlement discussions concerning litigation arising out of a voter-approved ballot measure, known as Measure B. The parties have reached the below framework for a tentative settlement of San Jose Police Officers' Association v. City of San Jose, Santa Clara Superior Court, No. 1-12-CV-22926, Sapient, et. Al. v. City of San Jose, et. al., Santa Clara County Superior Court, No. 1-13-CV-225928 (and associated actions), The People of the State of California ex rel. San Jose Police Officers' Association v. City of San Jose, Santa Clara County Superior Court, No. 1-13-CV245503 (quo warranto proceedings), International Association of Firefighters, Local 230 vs. City of San Jose, Public Employment Relations Board Unfair Practice No. SF-CE-969-M, and various other actions, including grievances. This settlement framework shall be presented for approval by the City Council and the respective Union Board of Directors.*

*It is understood that this settlement framework is subject to a final overall global settlement. In the event the settlement framework is not accepted, all parties reserve the right to modify, amend and/or add proposals. Each individual item contained herein is contingent on an overall global settlement/agreement being reached on all terms, by all parties/litigants (including the retirees), and ratified by union membership and approved by the City Council.*

## MARCH 11<sup>th</sup> LETTER

*In accordance with Mayor Sam Liccardo's letter on behalf of the City Council to all bargaining units dated March 11, 2015, inclusive of the direction from Councilmember Don Rocha's March 6, 2015, memorandum, the City Council is willing to pursue settlement of Measure B litigation through a quo warranto process in 2015, contingent on the Council's satisfaction that the following conditions have been met before the quo warranto process begins:*

- 1. Agreement on an alternative strategy to implement pension reform and replace Measure B. Such agreement must achieve all reform objectives that the Council deems necessary to the public interest, including improved city services, and the sustainability of our retirement plans.*
- 2. The quo warranto strategy is legally viable and can be carried out on a timeline that would allow the Council sufficient time to pursue a 2016 ballot measure should a quo warranto strategy fail.*
- 3. All bargaining units have agreed to pursue the quo warranto strategy.*
- 4. The Council is satisfied that the quo warranto strategy does not impair the public interest.*

*If agreements are not reached to end litigation with all plaintiffs in Measure B litigation, or if the process of quo warranto does not permit the replacement of Measure B with this or any other agreement, the City Council, Local 230 and the POA shall request a stay of all Measure B litigation to which they are involved in to permit this agreement to appear on a 2016 ballot as a measure to replace Measure B in its entirety with respect to police and fire participants of the Police & Fire Retirement Plan. If this ballot measure is enacted, all Measure B litigation involving Local 230, the POA and the City would be terminated and dismissed.*

## **Retirement Memorandum of Agreement**

1. The parties (The City of San Jose, San Jose Police Officers' Association and San Jose Fire Fighters, IAFF Local 230) shall enter into a Tripartite Memorandum of Agreement to memorialize all agreements related to retirement. The Tripartite MOA shall expire June 30, 2025.
2. The Tripartite MOA will be a binding agreement describing the terms of the final agreement between the parties and will be subject to any agreed-upon reopeners herein.

**The current Tier 2 retirement plans for Police and Fire employees will be modified as follows:**

1. Pension benefit based upon a back-loaded accrual rate as follows:
  - a. For each year from years 1-20: 2.4% per year
  - b. For each year from years 21-25: 3.0% per year
  - c. For each year 26 and above: 3.4% per year
2. Retirement Age
  - a. The eligible age for an unreduced pension benefit will be age 57
  - b. The eligible age for a reduced pension benefit will be age 50. The reduction for retirement before age 57 will be 7.0% per year, prorated to the closest month.
3. 80% cap
  - a. The maximum pension benefit will be 80% of an employee's final average salary
4. Three-year final average salary
5. A member is vested after 5 years of service
6. No retroactive pension increases or decreases

- a. Any such changes in retirement benefits will only be applied on a prospective basis.
7. No pension contribution holiday
8. Pensionable pay will include base pay, holiday in lieu pay, EMT pay, anti-terrorism training pay, POST pay, and base FLSA pay as per Tier 1 members.
9. Current Tier 2 sworn employees will retroactively be moved to the new Tier 2 retirement benefit plan except as provided in Paragraph 16a (returning Tier 1).
  - a. Any costs, including any unfunded liability, associated with transitioning current Tier 2 employees into the restructured Tier 2 benefit will be amortized as a separate liability over a minimum of 16 years and split between the employee and the City 50/50. This will be calculated as a separate unfunded liability and not subject to the ramp up increments of other unfunded liability.
10. Removal of language limiting vesting of benefits from City Charter (Section 1508-A (h))
11. Tier 2 cost sharing
  - a. Employees and the City will split the cost of Tier 2 including normal cost and unfunded liabilities on a 50/50 basis
  - b. In the event an unfunded liability is determined to exist for the Police and Fire Tier 2 retirement plans, Tier 2 employees will contribute (the "Ramp Up") toward the unfunded liability in increments of 0.33% per year until such time that the unfunded liability is shared 50/50 between employee and employer
  - c. Until such time that the unfunded liability is shared 50/50, the City will pay the balance of the unfunded liability
12. Cost of Living Adjustment (COLA)

- a. Tier 2 retirees will receive an annual cost of living adjustment based on the Consumer Price Index – Urban Consumers (San Francisco-Oakland-San Jose, December to December) or 2.0%, whichever is lower
  - b. In the first year of pension benefits, the COLA will be pro-rated based on the date of retirement
13. Disability Benefit (Tier 2)
- a. A Tier 2 member who is approved by the independent medical review panel for a service-connected disability retirement is entitled to a monthly allowance equal to the greater of:
    - i. 50% of final compensation;
    - ii. A service retirement allowance, if he or she qualified for such;
    - iii. An actuarially reduced factor, as determined by the plan's actuary, for each quarter year that his or her service age is less than 50 years, multiplied by the number of years of safety service subject to the applicable formula, if not qualified for a service retirement.
  - b. A Tier 2 member who is approved by the independent medical review panel for a non-service connected disability is entitled to a monthly allowance equal to:
    - i. If less than age 50: 1.8% per year of service; or
    - ii. If older than age 50: The amount of service pension benefit as calculated based upon the service pension formula.
14. If there is any Tier 1 or Tier 2 benefit not mentioned in this framework, the parties agree to meet to discuss whether or not that benefit should be included in the Tier 2 benefit.
15. Tier 2 members will be provided with 50% Joint and Survivor benefits, which provide 50% of the retiree's pension to the retiree's surviving

spouse or domestic partner in the event of the retiree's death after retirement.

- a. Tier 2 members will be provided with survivor benefits in the event of death before retirement. These benefits will be the same as Tier 1 members but reduced to reflect the new 80% pension cap versus the current 90% pension cap.

16. "Classic" Lateral will become Tier 1, including former San Jose Fire Department /San Jose Police Department sworn employees

- a. Former Tier 1 sworn City employees who have been rehired since the implementation of Tier 2 or rehired after the effective date of a tentative agreement based on this framework will be placed in Tier 1
- b. Any costs, including any unfunded liability, associated with transitioning current Tier 2 employees who were former Tier 1 sworn City employees who have since been rehired will be amortized as a separate liability over a minimum of 16 years and split between the employee and the City 50/50. This will be calculated as a separate unfunded liability and as Tier 1 employees these members are not subject to a ramp up in unfunded liability.
- c. Any lateral hire from any other pension system who transfers as a "Classic" employee under PEPRA, regardless of tier, will be placed in Tier 1.
- d. Any lateral hire from any other pension system who transfers as a "new" employee under PEPRA will be placed in Tier 2.

17. Tier 2 members will be provided the same service repurchase options as Tier 1 members (excluding purchases of service credit related to disciplinary suspensions) so long as all costs for the repurchase are paid for by the employee.

18. The City and the Unions agree to work with their actuaries to jointly request that the Police and Fire Retirement Board of Administration and its actuary carefully consider retirement rate actuarial assumptions with regard to the new Tier 2 plan. Specifically, the parties will request that the Board and its actuary incorporate retirement rate assumptions similar to the CalPERS retirement rates of the similarly designed CalPERS PEPR plan rather than that of the existing San Jose Police and Fire Tier 1 plan.

**Retiree Healthcare - All provisions below are contingent on final costing by the City's Actuary and review for legal and/or tax issues**

1. Close the current defined benefit retiree healthcare program to new employees and current Tier 2 employees
2. The parties will implement a defined contribution healthcare benefit in the form of a Voluntary Employee Beneficiary Association (VEBA). The plans would not provide any defined benefit, would not obligate the City to provide any specific benefit upon member retirement, and therefore create no unfunded liability. This agreement does not require the City to contribute any future funds to an employee's VEBA, nor does it preclude an agreement to allow future City contributions
3. New lowest cost medical plan
  - a. Kaiser NCAL 4307 Plan (305/\$3,000 HSA-Qualified Deductible HMO Plan) will be adopted as the new lowest cost healthcare plan, for active and retired members



- b. The City will continue the cost sharing arrangement for active employees of 85% of the lowest cost non-deductible HMO plan
  - c. The "lowest cost plan" for any current or future retiree in the defined benefit retirement healthcare plan shall be set that it may not be lower than the "silver" level as specified by the current Affordable Care Act in effect at the time of this agreement. This specifically includes the provision that the healthcare plan must be estimated to provide at least 70% of healthcare expenses as per the current ACA "silver" definition.
4. Potential Tier 1 opt-out
- a. So long as it is legally permitted, Tier 1 employees may make a one-time election to opt-out of the defined benefit retiree healthcare plan into an appropriate vehicle for the funds, i.e. a Voluntary Employee Beneficiary Association (VEBA). Members of the current defined benefit plans will be provided with one irrevocable opportunity to voluntarily "opt out" of the current retiree medical plan. Those members who "opt out," and are thus not covered by the City defined benefit retiree medical plan, will be mandated to join the VEBA plan.
5. Enrollment in Medicare Parts A and B as required by any applicable federal regulations or by insurance providers
6. The current defined benefit retiree healthcare plan is modified to enable retired members to select an "In lieu" premium credit option. At the beginning of each plan year, retirees can choose to receive a credit for 25% (twenty-five percent) of the monthly premium of the lowest priced healthcare and dental plan as a credit toward future member healthcare premiums in lieu of receiving healthcare coverage. On an annual basis,

or upon qualifying events described in the "special enrollment" provisions of the Health Insurance Portability and Accountability Act of 1996, retirees and their spouses/dependents can elect to enroll in a healthcare plan or continue to receive an "in lieu" premium credit. Enrollees receiving in lieu credit at any tier other than retiree only must verify annually that they are still eligible for the tier for which they are receiving the in lieu credit. If a member selects the "in-lieu" premium credit, but the member, their survivor or beneficiaries never uses their accumulated premium credit, the accumulated credit is forfeited. At no time can a member or survivor/beneficiary take the credit in cash or any form of taxable compensation. There is no cap on the size of the accumulated credit.

7. Members of the VEBA and their spouses/dependents, during retirement, may also elect to enter or exit coverage on an annual basis or upon a qualifying event (however, members in the VEBA will not receive an "in lieu" benefit).
8. The VEBA contribution rate for all new hires and Tier 2 members will be 4.0% of base pay. The VEBA contribution rate for all members who opt out of the defined benefit plan and are mandated to join the VEBA plan will be 5.0% of base pay.
9. Members who remain in the Defined Benefit retirement healthcare plan will contribute 8.0% of their pensionable payroll into the plan. The City will contribute the additional amount necessary to ensure the Defined Benefit retirement healthcare plan receives its full Annual Required Contribution each year. If the City's portion of the Annual Required Contribution reaches 11% of payroll, the City may decide to contribute a maximum of 11%.

10. The parties have been advised that the difference between the defined benefit contribution rate (8.0%) and the VEBA opt-out contribution rate (5.0%) will be taxable income.
11. Upon making such an irrevocable election to opt-out of the defined benefit retiree healthcare plan, an amount estimated to equal the member's prior retiree healthcare contribution, with no interest included, will be contributed by the City to the member's VEBA plan account (pending costing and tax counsel advice). In making these contributions, the City may transfer funds from the 115 Trust to the members' VEBA plan account to the extent permitted by federal tax law and subject to receipt of a favorable private letter ruling. If it is determined by the IRS that the funds may not come out of the 115 trust, the parties will meet and confer regarding the opt-out and whether or not it can be implemented through other means. In addition, if the amount needed based on the number of employees who chose to opt out is more than the funds in 115 trust, the parties will also meet and confer. Members will be provided with individual, independent financial counseling to assist them with any decisions to remain in or "opt out" of the defined benefit retiree medical plan.
12. Pending legal review by tax counsel, deferred-vested Tier 1 members who return to San José will be given a one-time irrevocable option to "opt out" of the defined benefit retirement healthcare option. Upon choosing to "opt out", they will become a member of the VEBA and their VEBA account will be credited for their prior contributions. If they choose not to "opt out", they will return to the Defined Benefit retirement healthcare plan.

13. Catastrophic Disability Healthcare Program –Members of the VEBA who receive service-connected disability retirements will be eligible for 100% of the single premium for the lowest cost plan until the member and is eligible for Medicare (usually age 65).
- a. Qualifications - The member must not be eligible for an unreduced service retirement.
  - b. The member must exhaust any funds in their VEBA account prior to becoming eligible for the Catastrophic Disability Healthcare Program.
  - c. Upon reaching Medicare eligibility, the benefit will cease
  - d. Any retiree who qualifies must submit on an annual basis an affidavit verifying that they have no other employment which provides healthcare coverage.
  - e. If a retiree is found to have other employment which provides healthcare coverage, their eligibility to participate in the Catastrophic Disability Healthcare Program will automatically cease, subject to re-enrollment if they subsequently lose said employment-provided healthcare coverage.

#### **Disability Definition and Process**

- 1. Reinstate the previous City definition for disability for all sworn employees
- 2. Applications for disability must be filed within one month of separation from City service subject to the exceptions reflected in Municipal Code § 3.36.920 A (4).
- 3. All applicants must submit medical paperwork indicating the initial nature of their disability including the affected body part if applicable, the current level of disability, and current treatments underway. Such medical paperwork must be filed within one year of separation unless

the independent medical review panel grants a longer deadline due to extenuating circumstances.

4. Applications for disability may not be deferred by the applicant past four (4) years of the date of application submittal, unless the independent medical review panel grants a longer deadline due to extenuating circumstances.
5. The member and the City may have legal representation at hearings
6. Independent panel of experts appointed by 6 of 9 retirement board members will evaluate and approve or deny disability retirement applications
  - a. Using the established Request for Proposal process, the retirement boards will recruit potential members of the independent medical panel
  - b. Each member shall have a four-year term and meet the following minimum qualifications
    - i. 10 years of practice after completion of residency
    - ii. Practicing or retired Board Certified physician
    - iii. Not a prior or current City employee
    - iv. No experience providing the City or retirement boards with medical services, except for prior service on medical panel
    - v. No experience as a Qualified Medical Evaluator or Agreed Medical Evaluator
    - vi. Varying medical experience
  - c. A panel of three independent medical experts will decide whether to grant or deny all disability applications, whether service or non-service connected. The panel's decision will be made by majority vote.
  - d. Upon its own motion or request, the independent medical panel may determine the status of a disability retirement recipient to

confirm that the member is still incapacitated or if the member has the ability to return to work

7. Administrative law judge

- a. A decision to grant or deny the disability retirement made by the independent medical panel may be appealed to an administrative law judge.
- b. Applicant or City has forty-five (45) days to appeal a decision made by the independent medical panel. The appeal hearing must commence within ninety (90) days of the notice of appeal, unless a later date is mutually agreed to by the parties.
- c. The decision rendered by the administrative law judge is to be based on the record of the matter before the independent medical review panel.
- d. The decision of the administrative law judge will be a final administrative decision within the meaning of Section 1094.5 of the California Code of Civil Procedure.

8. Modified Duty (POA – Article 39)

- a. The City and the POA will continue to discuss the modified duty positions during collective bargaining
- b. While these discussions take place, the number of modified duty positions will be increased to 30
- c. The independent medical review panel will evaluate the status of the employees in the modified duty program on a yearly basis until the program is modified through bargaining

9. Worker's Compensation Reform

- a. For Tier 2 participants, the workers' compensation offset currently in place for Federated Plan participants will apply to a maximum aggregate total of \$10,000.00 per Tier 2 employee in workers'

compensation cash disability benefit awards only using the same pension benefit offset formula.

- b. In an effort to streamline the workers' compensation process, reduce costs, decrease the number of work related injuries through prevention and expedite the return to work of those injured or ill, the parties agree to convene a Public Safety Wellness Improvement Committee to discuss modifications to, or creation of, wellness and/or workers' compensation policies, procedures and protocols.

#### **Supplement Retiree Benefit Reserve (SRBR)**

1. Continue elimination of SRBR
  - a. The funds credited to the SRBR will continue to be credited to the Police and Fire Department Retirement Plan to pay for pension benefits
2. City will replace SRBR with guaranteed purchasing power (GPP) provision for all Tier 1 retirees, prospectively. The GPP is intended to maintain the monthly allowance for Tier 1 retirees at 75% of purchasing power effective with the date of the retiree's retirement
  - a. Beginning January 2016 and each January thereafter, a retiree's pension benefit will be recalculated annually to determine whether the benefit level (including any increases due to cost of living adjustments) has kept up with inflation as measured by the CPI-U (San Francisco-Oakland-San Jose). The actual benefit level will be compared to what would have been required to maintain the same purchasing power as the retiree had at the time of retirement, with a CPI-based increase.

- b. Those Tier 1 retirees whose benefit falls below 75% of purchasing power will receive a supplemental payment that shall make up the difference between their current benefit level and the benefit level required to meet the 75% GPP.
- c. The supplemental GPP payment to qualifying retirees will be paid annually in a separate check, beginning February 2016, and each February thereafter.
- d. The number of Tier 1 retirees whose benefit level was below 75% GPP at the time of costing was approximately 55.
- e. In the event of litigation by a retired member or members of POA and/or IAFF Local 230 challenging this provision of the Settlement Agreement against POA and/or IAFF Local 230, the Unions will have a right to tender the defense of the litigation to the City. City will accept the defense of the litigation and will defend POA and/or IAFF Local 230 with counsel of City's choice, including the City Attorney's Office. If the City is also named defendant in any such suit, Unions will not claim that joint representation of either or both of them and the City constitutes a legal conflict for the attorney(s) defending the suit. This defense obligation will not apply to lawsuits challenging or in any way relating to this provision filed more than five years after the effective date of this agreement.

### **Memoranda of Agreement (MOA)**

1. This agreement is contingent upon reaching a successor MOA agreement with the POA.

### **Attorney's Fees**



to discuss provisions for  
consideration of a 2016  
quarter.

MEWORK

7/15/15  
9am

7/15/15  
CD's  
@ 9am



July 23, 2015

Jennifer Schembri  
Interim Director  
City Manager's Office of Employee Relations  
200 E. Santa Clara Street, 3rd Floor Wing  
San José, CA 95113-1905

**Re: San Jose Police Officers and Fire Fighters Tier 2 Pension Benefit**

Dear Ms. Schembri:

This letter provides our analysis of the San Jose Police Officers and Fire Fighters Tier 2 pension benefit agreement. We understand the agreement will redefine Tier 2 pension benefits as:

■ **Benefit formula based on City service:**

Years of City service	Benefit Accrual Rate
1-20	2.4%
21-25	3.0%
26+	3.4%

■ **Normal retirement age 57 with 7% reduction for each year retirement precedes age 57**

■ **Provide the following ancillary benefits:**

- Cost of Living Adjustments based on the lesser of CPI and 2%
- Automatic 50% survivor benefit
- Disability benefit the greater of:
  - ☐ 50% of current pensionable wages
  - ☐ Service retirement benefit if eligible to retire
  - ☐ Actuarial equivalent of service retirement benefit if not eligible to retire
- 5 year vesting

**Analysis**

We priced the agreement Tier 2 formula using both Cheiron's current Tier 2 retirement rates and retirement rates used by CalPERS for a similar pension formula. The following table shows the estimated impact on the Tier 2 Normal Cost:

	Agreement Tier 2 Formula using			
	Current Tier 1	Current Tier 2	Cheiron Tier 2 Retirement Rates	CalPERS Retirement Rates for Similar Formula
<b>Total</b>	43.0%	22.4%	30.5%	29.4%
<b>City</b>	31.6%	11.2%	15.25%	14.7%
<b>Member</b>	11.4%	11.2%	15.25%	14.7%

We believe the CalPERS retirement rates for similar formulas are reasonable retirement rates and would recommend Cheiron consider using these retirement rates rather than the existing Tier 2 retirement rates.



The following table projects out City cost assuming Tier 2 benefits were the same as Tier 1, under current Tier 2 benefit formula and under the agreed to Tier 2 benefit formula over the next 30 years (note agreed to projections are based on the CalPERS retirement rates for a similar benefit formula):

City of San Jose Police & Fire Projection of Additional City Cost of Agreed to Pension Tier 2 Benefit Formula (\$ millions)							
FYE	Total Proj. Payroll	Tier 2 Benefit Unchanged		Tier 2 Benefit Restored to Tier 1 Level		Tier 2 Benefit As Bargained	
		22.4% Tier 2 NC		43.0% Tier 2 NC		29.4% Tier 2 NC	
		Total City Cost		Total City Cost		Total City Cost	
		% of pay	\$	% of pay	\$	% of pay	\$
2016	194.3	11.2%	1.4	31.6%	3.9	14.7%	1.8
2017	200.6	11.2%	2.0	31.6%	5.8	14.7%	2.7
2018	207.0	11.2%	2.9	31.6%	8.1	14.7%	3.8
2019	213.9	11.2%	3.9	31.6%	10.9	14.7%	5.1
2020	220.9	11.2%	5.0	31.6%	14.1	14.7%	6.6
2021	228.1	11.2%	6.2	31.6%	17.6	14.7%	8.2
2022	235.5	11.2%	7.8	31.6%	22.0	14.7%	10.2
2023	243.1	11.2%	9.5	31.6%	26.9	14.7%	12.5
2024	251.0	11.2%	11.5	31.6%	32.3	14.7%	15.0
2025	259.2	11.2%	13.4	31.6%	37.9	14.7%	17.6
2026	267.6	11.2%	15.2	31.6%	43.0	14.7%	20.0
2027	276.3	11.2%	17.1	31.6%	48.3	14.7%	22.4
2028	285.3	11.2%	19.2	31.6%	54.1	14.7%	25.2
2029	294.6	11.2%	21.2	31.6%	59.7	14.7%	27.8
2030	304.2	11.2%	23.1	31.6%	65.2	14.7%	30.3
2031	314.0	11.2%	25.0	31.6%	70.5	14.7%	32.8
2032	324.2	11.2%	27.0	31.6%	76.2	14.7%	35.4
2033	334.8	11.2%	29.1	31.6%	82.0	14.7%	38.2
2034	345.7	11.2%	31.4	31.6%	88.6	14.7%	41.2
2035	356.9	11.2%	33.9	31.6%	95.5	14.7%	44.4
2036	368.5	11.2%	36.3	31.6%	102.4	14.7%	47.6
2037	380.5	11.2%	38.5	31.6%	108.7	14.7%	50.6
2038	392.8	11.2%	40.7	31.6%	114.7	14.7%	53.4
2039	405.6	11.2%	42.7	31.6%	120.6	14.7%	56.1
2040	418.8	11.2%	44.9	31.6%	126.7	14.7%	59.0
2041	432.4	11.2%	47.0	31.6%	132.7	14.7%	61.7
2042	446.5	11.2%	49.1	31.6%	138.4	14.7%	64.4
2043	461.0	11.2%	51.0	31.6%	143.9	14.7%	66.9
2044	475.9	11.2%	52.9	31.6%	149.2	14.7%	69.4
2045	491.4	11.2%	54.8	31.6%	154.5	14.7%	71.9
Total			763.6		2,154.5		1,002.3

Jennifer Schembri  
July 23, 2015  
Page 3



The agreement also provides that Tier 2 members will pay 50% of the unfunded liability contribution. Even though there is ramp up feature to this cost sharing we believe, if unfunded liabilities do materialize this will be a cost savings feature for the City.

**Assumptions**

Study results were estimated using the same assumptions, except as noted above for retirement rates, as the Cheiron June 30, 2014 actuarial valuation.

\* \* \*

To the best of our knowledge, this letter is complete and accurate and has been prepared using generally accepted actuarial principles and practices. As a member of the American Academy of Actuaries meeting the Academy Qualification Standards, I certify the actuarial results and opinions herein.

Please call Cathy Wandro (650-377-1606) or me (650-377-1601) with any questions about this letter.

Sincerely,

John E. Bartel  
President

c: Cathy Wandro, Bartel Associates  
Marilyn Oliver, Bartel Associates

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July 23, 2015

Jennifer Schembri  
Interim Director  
City Manager's Office of Employee Relations  
200 E. Santa Clara Street, 3rd Floor Wing  
San José, CA 95113-1905

**Re: San Jose Police Officers and Fire Fighters Retiree Healthcare Agreement**

Dear Ms. Schembri:

This letter provides our analysis of the San Jose Police Officers and Fire Fighters retiree healthcare agreement. We understand the agreement will:

- Establish a VEBA
  - New hires will participate in the VEBA only and will not be eligible for current plan benefits (except as noted below for subsidized premiums).
  - Current retiree healthcare participants would be given the option to "opt-out" of the current plan and join the VEBA. This, in conjunction with closing the plan to new hires will effectively mean the current benefit will wear away over time.
    - ☐ Historical contributions to the current plan would be transferred for anyone opting out of the current plan.
- Contributions:
  - City will contribute the full ARC, less member contributions, to the current plan based on total pensionable pay regardless of whether an individual participates in the current plan or the VEBA. (note the City, per the agreement, may cap its contribution at 11% of total pensionable pay)
  - City will not contribute to the VEBA.
  - Members remaining in the current plan will contribute 8% of their pensionable pay.
  - Members participating in the VEBA will not contribute to the current plan.
- All retirees, whether participating in the current plan or the VEBA would be allowed to participate in the City's medical plan paying subsidized premiums.
- Adoption of the Kaiser 4307 medical plan for actives and retirees.
- Proposal is contingent on cost analysis determining that funding will be adequate for the current plan.
- Add an "in lieu" feature to the current plan that would allow retirees to receive a credit for 25% of the lowest cost plan as a credit toward future healthcare premiums, in lieu of receiving healthcare coverage.



### Analysis – Funding Valuation Basis

The following table shows the estimated impact of the proposed changes on the Actuarial Liability under the Funding Valuation basis which uses a 7% discount rate and includes the explicit subsidy only (millions):

	Current Valuation	With Kaiser 4307 Plan	With Opt Out	Total \$ Impact	Total % Impact
Active	\$ 208.4	\$ 180.7	\$ 135.8	\$ (72.6)	-35%
Inactive	<u>347.4</u>	<u>305.8</u>	<u>305.8</u>	<u>(41.5)</u>	-12%
Total	555.7	486.5	441.6	(114.1)	-21%

The following table shows the estimated impact of the proposed changes on the contribution rates for the explicit subsidy under the Funding Valuation basis. This table is based on current amortization periods (24 years for Police and 26 years for Fire).

	Uncapped			Capped		
	Current Valuation	With Opt Out	% of Total Payroll Impact	Current Valuation	With Opt Out	% of Total Payroll Impact
Police Member	11.71%	8.00%	-7.26%	10.00%	8.00%	-5.55%
Police City	<u>12.82%</u>	<u>11.98%</u>	<u>-0.84%</u>	<u>11.00%</u>	<u>11.00%</u>	<u>0.00%</u>
Total <sup>1</sup>	24.53%	16.43%	-8.10%	21.00%	15.45%	-5.55%
Fire Member	10.54%	8.00%	-6.09%	9.74%	8.00%	-5.29%
Fire City	<u>11.56%</u>	<u>10.26%</u>	<u>-1.30%</u>	<u>10.62%</u>	<u>10.26%</u>	<u>-0.36%</u>
Total <sup>1</sup>	22.10%	14.71%	-7.39%	20.36%	14.71%	-5.65%

We are also attaching a table that projects City contributions under three scenarios: current plan with current amortization periods, agreement plan with 30 year fresh start amortization period and agreement plan with current amortization periods. Please note the projections based on the agreement include an assumption of additional Tier 2 payroll growth over the next 3 years.

The following table shows the impact of the proposed changes on FY 2015/16 dollar contributions for the explicit subsidy with total contributions uncapped but member contributions capped and with current amortization periods, rounded to the nearest \$100,000:

	Current	With Opt Out	Savings
Police Total NC	\$ 9,100,000	4,100,000	5,000,000
Police UAL	<u>19,500,000</u>	<u>15,000,000</u>	<u>4,500,000</u>
Total Police	28,600,000	19,100,000	9,500,000
Member	<u>11,600,000</u>	<u>5,200,000</u>	<u>6,500,000</u>
Net Police	17,000,000	13,900,000	3,000,000
Fire Total NC	\$6,100,000	2,800,000	3,300,000
Fire UAL	<u>11,100,000</u>	<u>8,700,000</u>	<u>2,400,000</u>
Total Fire	17,200,000	11,500,000	5,700,000
Member	<u>7,600,000</u>	<u>3,500,000</u>	<u>4,100,000</u>
Net Fire	9,600,000	8,000,000	1,600,000
Total Net Safety	\$ 26,600,000	21,900,000	4,600,000

<sup>1</sup> The proposal requires member contribution rate be applied only to pensionable pay for those remaining in the current plan while the City contribution rate would be applied to total pensionable pay. Since the member and City rates apply to different pensionable pay the total percentages were calculated for the "With Opt Out" scenario based on total pensionable pay, including those assumed to opt out.



The Net contributions are calculated with a cap on Member contribution rates but without regard to any cap on City contribution rates.

#### Analysis – GASB Valuation Basis

The following table shows the estimated impact of the proposed changes on the Actuarial Liability under the GASB Valuation basis which uses a 6% discount rate and includes both the explicit and implicit subsidy (millions):

	Current Valuation	With Kaiser 4307 Plan	With Opt Out	Total \$ Impact	Total % Impact
Active	\$ 277.7	\$ 247.7	\$ 188.6	\$ (89.1)	-32%
Inactive	429.0	380.6	380.6	(48.4)	-11%
Total	706.7	628.4	569.2	(137.5)	-19%

The following table shows the estimated impact of the proposed changes on the Annual Required Contribution for the implicit and explicit subsidy under the GASB Valuation basis (millions):

	Current Valuation	With Opt Out	Total Impact
Total ARC \$	\$ 51.0	\$ 34.0	\$ (17.0)
Total ARC %	27.09%	18.07%	-9.02%

The ARC %'s are based on total pensionable pay, including those assumed to opt out.

#### Assumptions

The above calculations are based on the assumption that the following percentage of employees will opt into the VEBA:

Age	Service						
	x < 5	5 ≤ x < 10	10 ≤ x < 15	15 ≤ x < 20	20 ≤ x < 25	25 ≤ x < 30	30 ≤ x
< 25	100%	n/a	n/a	n/a	n/a	n/a	n/a
25 - 29	100%	100%	n/a	n/a	n/a	n/a	n/a
30 - 34	100%	100%	100%	n/a	n/a	n/a	n/a
35 - 39	100%	100%	80%	60%	n/a	n/a	n/a
40 - 44	100%	80%	60%	33%	0%	n/a	n/a
45 - 49	100%	67%	33%	0%	0%	0%	n/a
50 - 54	100%	67%	33%	0%	0%	0%	n/a
55 - 59	n/a	n/a	33%	0%	0%	0%	n/a
60 - 64	n/a	n/a	33%	n/a	n/a	n/a	0%
≥ 65	n/a	n/a	n/a	n/a	n/a	n/a	n/a

In addition, the results under the GASB valuation basis assume 50% of those who opt out will remain in the City's medical plans and continue to have a liability for the implicit subsidy.

Study results were estimated based on the Cheiron June 30, 2014 actuarial valuation for both funding (explicit subsidy only) and GASB purposes (explicit and implicit subsidy). However, even though the City is not pre-funding the implicit subsidy, it still exists as long as the retiree participates in the City's medical plans whether the member stays in the current plan or opts out for the VEBA. The liability for the implied subsidy will remain with the City and only decrease to the extent that opt outs leave the City plans.

\* \* \*

Jennifer Schembri  
July 23, 2015  
Page 4



To the best of our knowledge, this letter is complete and accurate and has been prepared using generally accepted actuarial principles and practices. As a member of the American Academy of Actuaries meeting the Academy Qualification Standards, I certify the actuarial results and opinions herein.

Please call Cathy Wandro (650-377-1606) or me (650-377-1601) with any questions about this letter.

Sincerely,

John E. Bartel  
President

c: Cathy Wandro, Bartel Associates  
Marilyn Oliver, Bartel Associates

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**San Jose Police & Fire Retiree Medical Plan**

**City Contribution Projections**

**Projections are based on the 6/30/14 Funding Valuation and do not include any liability associated with the Implied Subsidy**

**Projection of City Contributions - Combined Police & Fire (\$millions)**

EE % City % UAL Amort. P/F Modify Pay?  FYE	Current Plan		3a		3b	
	50% Med/25% Dent		8%		8%	
	50% Med/75% Dent		ARC less EE%		ARC less EE%	
	24/26		30/30		24/26	
	No		Yes		Yes	
	%	\$	%	\$	%	\$
2016	12.32%	\$ 23.9	9.51%	\$ 19.4	10.8%	\$ 21.9
2017	12.32%	24.7	9.09%	20.1	10.3%	22.7
2018	12.32%	25.5	8.70%	20.8	9.8%	23.5
2019	12.32%	26.4	8.73%	21.5	9.9%	24.3
2020	12.32%	27.2	8.76%	22.3	9.9%	25.2
2021	12.32%	28.1	8.79%	23.1	9.9%	26.1
2022	12.32%	29.0	8.84%	24.0	10.0%	27.1
2023	12.32%	29.9	8.88%	24.9	10.0%	28.1
2024	12.32%	30.9	8.93%	25.8	10.1%	29.1
2025	12.32%	31.9	8.98%	26.8	10.1%	30.2
2026	12.32%	33.0	9.02%	27.8	10.2%	31.3
2027	12.32%	34.0	9.05%	28.8	10.2%	32.5
2028	12.32%	35.1	9.09%	29.9	10.2%	33.7
2029	12.32%	36.3	9.13%	31.0	10.3%	34.9
2030	12.32%	37.5	9.16%	32.1	10.3%	36.1
2031	12.32%	38.7	9.19%	33.2	10.3%	37.4
2032	12.32%	39.9	9.21%	34.4	10.4%	38.7
2033	12.32%	41.2	9.24%	35.6	10.4%	40.1
2034	12.32%	42.6	9.27%	36.9	10.4%	41.5
2035	12.32%	44.0	9.30%	38.2	10.4%	43.0
2036	12.32%	45.4	9.33%	39.6	10.5%	44.5
2037	12.32%	46.9	9.35%	41.0	10.5%	46.0
2038	12.32%	48.4	9.36%	42.4	10.5%	47.6
2039	12.32%	50.0	9.38%	43.8	10.5%	49.2
2040	7.06%	29.6	9.39%	45.3	3.9%	18.6
2041	7.06%	30.5	9.40%	46.8	3.9%	19.2
2042	4.06%	18.1	9.41%	48.4	0.0%	-
2043	4.06%	18.7	9.42%	50.0	0.0%	-
2044	4.06%	19.3	9.42%	51.7	0%	-
2045	4.06%	20.0	9.43%	53.4	0%	-
2046	4.06%	20.6	0%	-	0%	-
2047	4.06%	21.3	0%	-	0%	-
2048	4.06%	22.0	0%	-	0%	-
2049	4.06%	22.7	0%	-	0%	-
2050	4.06%	23.4	0%	-	0%	-
Totals		1,096.7		1,019.1		852.5
PV at 3% Int.		686.2		625.5		573.2
PV at 7% Int.		414.6		366.8		366.9



July 23, 2015

Jennifer Schembri  
Interim Director  
City Manager's Office of Employee Relations  
200 E. Santa Clara Street, 3rd Floor Wing  
San José, CA 95113-1905

**Re: San Jose Police Officers and Fire Fighters Guaranteed Purchasing Power (GPP)**

Dear Ms. Schembri:

This letter provides our analysis of the San Jose Police Officers and Fire Fighters Guaranteed Purchasing Power (GPP) agreement. We understand the agreement provides for a GPP benefit in exchange for agreement to eliminate the Supplemental Retirement Benefit Reserve (SRBR). Elimination of the SRBR has already resulted in significant savings. The GPP benefit will provide current and future Tier 1 retirees a guaranteed 75% of purchasing power benefit after retirement. This benefit will be calculated by comparing the ratio of actual pension benefits to what pension benefits would have been had retirees received 100% of Bay Area CPI increases. If that ratio is less than 75% then retirees would receive an additional check equal to the difference.

#### **Analysis**

We believe the cost of this benefit will only be significant if inflation returns to high levels. Inflation has generally been less than 3% (Tier 1 Cost of Living Adjustments) over the last 20 years so only retirees who retired several years ago (prior to 1981) would have ratios less than 75%. As of May 2015 there were approximately 56 retirees with an average age of 80.

The estimated liability for this group of earlier retirees is approximately \$2.4 million and because this is an increase for current retirees we think it is possible (if not likely) Cheiron will recommend a shorter (5 year) amortization period. If so then the first year payment will be about \$550,000. However, if they do not recommend a shorter amortization then using 20 years the first year payment will be about \$180,000. Both of these would increase with the aggregate payroll assumption of 3.25%.

Due to time constraints, our analysis did not include a volatility assumption for inflation. While we believe Cheiron will price the GPP for other (current and future) retirees using some volatility assumptions for inflation, we also would generally expect any additional cost to be fairly modest.

#### **Assumptions**

Study results were estimated using the same assumptions as the Cheiron June 30, 2014 actuarial valuation. Our analysis also assumes Cheiron will price this using stochastic simulations based on a median inflation assumption of 3% or less.

\* \* \*

Jennifer Schembri  
July 23, 2015  
Page 2



To the best of our knowledge, this letter is complete and accurate and has been prepared using generally accepted actuarial principles and practices. As a member of the American Academy of Actuaries meeting the Academy Qualification Standards, I certify the actuarial results and opinions herein.

Please call Cathy Wandro (650-377-1606) or me (650-377-1601) with any questions about this letter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'John E. Bartel'. The signature is located below the word 'Sincerely,'.

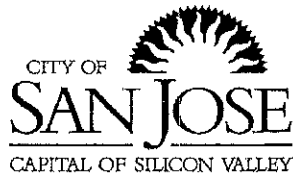
John E. Bartel  
President

c: Cathy Wandro, Bartel Associates

Marilyn Oliver, Bartel Associates

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COUNCIL AGENDA: 8/18/2015  
ITEM: 3.4

## Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jennifer Schembri

**SUBJECT:** SEE BELOW

**DATE:** August 17, 2015

Approved

Date

8/17/15

### SUPPLEMENTAL

**SUBJECT: ACTIONS RELATED TO THE SETTLEMENT AGREEMENT WITH THE SAN JOSE POLICE OFFICERS' ASSOCIATION AND THE SAN JOSE FIRE FIGHTERS, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 230**

### REASON FOR SUPPLEMENTAL

The reason for the supplemental memorandum is to provide additional information based on an addendum to the Alternative Pension Reform Settlement Framework Agreement reached with the San Jose Police Officers' Association (SJPOA) and International Association of Fire Fighters, Local 230 (IAFF, Local 230) on the quo warranto process to implement the Alternative Pension Reform Settlement Framework ("Framework Agreement").

### BACKGROUND

The City, the SJPOA and IAFF, Local 230 reached an agreement on the Framework Agreement on July 15, 2015. This agreement provides the framework for a settlement of the outstanding litigation between the parties regarding Measure B. This settlement is contingent on a number of factors, including settlements by other litigants (other bargaining units and retirees). Because the Framework Agreement does not include specific terms for implementation, the parties continued discussing the appropriate implementation path to take while acknowledging that the City is still in global settlement discussions with the Federated bargaining units and retirees' association. Addendum #1 regarding the ballot measure (Attachment A) and Addendum #2 regarding the implementation plan (Attachment B) should be considered addendums to the Alternative Pension Reform Framework Agreement.

### ANALYSIS

The agreed upon implementation path utilizes a two-prong approach that includes using the SJPOA quo warranto case to immediately implement the agreed-upon changes to retirement benefits and pursuing a November 2016 ballot measure. It is important to note that the quo warranto process allows the parties to carry out the Alternative Settlement Framework as quickly as practical to begin recruiting and retaining police offers immediately.

Under the agreement, before the quo warranto process is initiated in Court, the POA and IAFF, Local 230 will work collaboratively with the City to develop a Charter amendment ballot measure,

HONORABLE MAYOR AND CITY COUNCIL

August 17, 2015

**Subject: Actions Related to the Settlement Agreement with the San José Police Officers' Association and the San José Fire Fighters, International Association of Fire Fighters, Local 230**

Page 2

which, if the quo warranto process (as defined in the Settlement Framework and Proposed Quo Warranto Implementation Plan) succeeds, will supersede Measure B with the following: (1) a provision requiring voter approval of defined benefit pension enhancements, (2) a provision requiring actuarial soundness, (3) a provision prohibiting retroactivity of defined benefit pension enhancements, and (4) any other provisions contained in the Settlement Framework to which the parties mutually agree. The ballot measure will go to voters in November 2016. Once the parties mutually agree on language, POA and IAFF agree to endorse the ballot measure. Please refer to Attachment A – Addendum #1 for the agreement.

Once the Federated bargaining units and retirees' association agree to and ratify a global settlement of the remaining Measure B litigation, the implementation process will begin. Each party will request a stay in the Appellate Court regarding the Measure B litigation and unfair practice charges before the California Public Employee Relations Board (which will be stayed until December 31, 2015 subject to quarterly continuation if the quo warranto process is on-going). Using the POA case, the parties will propose a stipulation to stay the implementation of Measure B while the other items in the implementation process are proceeding. Please note that this may require coordination with the Attorney General. The parties will then propose a Stipulated Judgment in the quo warranto case that Measure B should be invalidated; however, the settlement will be non-precedential in any forum and the City will not admit wrongdoing (and the judgment will not include a finding that it negotiated in bad faith). The issue will be whether or not the City should have placed on the ballot the version of the ballot measure adopted by Council in December 2011 or resumed negotiations once it was modified. Please see the Attachment B - Addendum #2 for the detailed Proposed Quo Warranto Implementation Plan.

As part of the addendum agreement, the SJPOA and IAFF, Local 230 will oppose any third party litigation that challenges the invalidation of Measure B, whether by joining the litigation or petitioning an Amicus Brief.

In the event that the Federated bargaining units and retirees' association do not reach agreements to settle litigation with the City or the quo warranto process fails to invalidate Measure B, the parties agreed that the November 2016 ballot measure would implement the Alternative Pension Reform Framework.

The City Administration will continue to update the Council on the implementation process.



Jennifer Schembri

Director of Employee Relations

Attachment A – Addendum #1 to the July 15, 2015 Alternative Pension Reform Settlement Framework

Attachment B – Addendum #2 to the July 15, 2015 Alternative Pension Reform Settlement Framework

For questions, please contact Jennifer Schembri, Director of Employee Relations at (408) 535-8154.

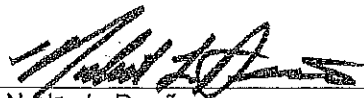
**ADDENDUM #1 TO THE JULY 15, 2015 ALTERNATIVE PENSION REFORM SETTLEMENT  
FRAMEWORK**

BETWEEN  
THE CITY OF SAN JOSE  
AND

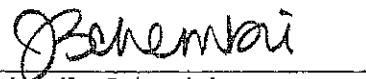
THE SAN JOSE POLICE OFFICERS' ASSOCIATION (POA)  
THE INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 230 (IAFF)

The POA and IAFF, Local 230 agree to work collaboratively with the City to develop a ballot measure, which, if the quo warranto process (as defined in the Settlement Framework and Proposed Quo Warranto Implementation Plan) succeeds, will supersede Measure B with the following (1) a provision requiring voter approval of defined benefit pension enhancements, (2) a provision requiring actuarial soundness, (3) a provision prohibiting retroactivity of defined benefit pension enhancements, and (4) any other provisions contained in the Settlement Framework that the parties mutually agree to, for inclusion in a 2016 ballot measure that will incorporate any such provisions into the City Charter. Once the parties mutually agree to the language, POA and IAFF shall endorse the ballot measure.

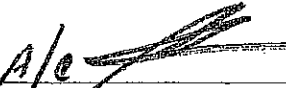
## FOR THE CITY:

  
Norberto Dueñas  
City Manager

8/14/15  
Date

  
Jennifer Schembri  
Director of Employee Relations

8/14/15  
Date

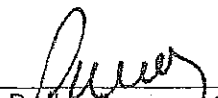
  
Edgardo Garcia  
Assistant Chief of Police

8/14/15  
Date

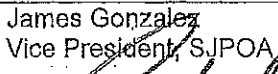
  
Charles Sakai  
Labor Consultant

8/14/15  
Date

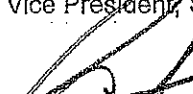
## FOR THE UNIONS:

  
Paul Kelly  
President, SJPOA

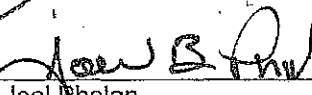
8/14/15  
Date

  
James Gonzalez  
Vice President, SJPOA

Date

  
Gregg Adam  
SJPOA Counsel

8/14/15  
Date

  
Joel Phelan  
President, IAFF, Local 230

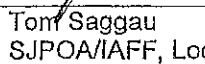
8/14/15  
Date

Sean Kaidor  
Vice President, IAFF, Local 230

Date

Christopher Platten  
Legal Counsel, IAFF, Local 230

Date

  
Tom Saggau  
SJPOA/IAFF, Local 230 Consultant

8.14.15  
Date

# ADDENDUM #2 TO JULY 15, 2015 ALTERNATIVE PENSION REFORM SETTLEMENT FRAMEWORK

BETWEEN  
THE CITY OF SAN JOSE  
AND

THE SAN JOSE POLICE OFFICERS' ASSOCIATION (POA)  
THE INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 230 (IAFF)

## PROPOSED QUO WARRANTO IMPLEMENTATION PLAN, AUGUST 14, 2015

As agreed upon by the City, the San Jose Police Officers' Association and the International Association of Firefighters, Local 230, the proposed quo warranto implementation plan shall be followed by the parties in the manner prescribed below.

Step	Time	Action
1	Upon ratification of Federated/Retirees Deal	Global Settlement Addendum Agreement on quo warranto process: <ul style="list-style-type: none"> <li>Global settlement involving all litigants (including retirees) and bargaining unit representatives</li> <li>Entered into for purposes of settlement</li> <li>Except as otherwise provided in the stipulated order and judgment described below no admission of wrongdoing, including no admission that the City acted in bad faith</li> <li>Non-precedential for any purpose</li> </ul>
2	Immediately after #1	Parties ask for a stay in appellate proceedings (Lucas ruling). Local 230 will also ask for a stay in the PERB proceedings until December 31, 2015. If Step 8 has occurred and the quo warranto process is still ongoing, the stay will be continued on a quarterly basis until the conclusion of the quo warranto process.
3	Immediately after #1	Begin drafting ordinances and Tripartite Retirement MOA. Begin identifying ordinances implemented as a result of Measure B.
4	Immediately after #1	Local 230 intervenes as necessary/indispensable party in POA quo warranto case, without objection from the City, which may require seeking permission from the Attorney General.
5	Immediately after #1	Use POA case to offer a proposed stipulation to the Judge staying the implementation of Measure B pending further proceedings outlined below, which may require coordination with the Attorney General.
6	Immediately after #1	Parties negotiate charter language, pursuant to Addendum #1, simultaneous with agreement on stipulated facts, order and judgment.
7	Simultaneous with #6	Proposed Stipulated Facts, Order and Proposed Stipulated Judgment in quo warranto case  Outline of stipulated facts and findings: <ul style="list-style-type: none"> <li>history of negotiations including agreement on impasse as of 10/31, number of negotiation sessions, and use of mediation;</li> <li>changes to the proposed ballot language, including post-impasse changes;</li> <li>tension between City's powers and MMBA and effort to harmonize through Seal Beach negotiations—as described on pages 3-4 of Attorney General opinion No. 12-605.</li> </ul>



		<ul style="list-style-type: none"> <li>language from AG decision to grant QW based on the question of whether impasse had been broken by post-impasse ballot changes made by City and whether City Council needed to negotiate further (the inherent powers vs. MMBA issue);</li> <li>the cost and time and risks of litigating QW, including appeals and the issue of whether a decision in QW case would be universally applicable;</li> <li>the desirability of finding a solution that is collaborative</li> <li>financial challenges facing City and retirement funds - desire on part of employees, retirees and City to make benefits sustainable;</li> <li>Stipulated Order that City should have engaged in further negotiation of final language before putting on ballot to comply with MMBA obligations and failure to do so was a procedural defect significant enough to declare null and void Resolution placing Measure B on ballot; This order will not include a finding that the City acted in bad faith.</li> <li>Any additional language required by the court to allow the Court to approve the parties' Stipulated Order and Judgment. The Court order must be factually accurate.</li> <li>Agreement that Resolution No. 76158 shall be null and void.</li> <li>Overriding public interest in expedited resolution of quo warranto proceedings and implementation of Settlement Framework to restore and improve city services and sustainability of retirement plans.</li> <li>Stipulated Judgment shall reflect that Measure B shall be invalidated</li> </ul>
8	Upon completion of #6 and #7	Submission of Stipulated Order and Stipulated Judgment to quo warranto judge, which may require coordination with the Attorney General.
9	Upon entry of judgment in quo warranto case	<ul style="list-style-type: none"> <li>Formally adopt ordinances to implement Settlement Framework and replace Measure B.</li> <li>All parties dismiss/withdraw all complaints, unfair practice charges, etc.</li> </ul>
10	January 2016	Begin discussions over including any other provisions in Settlement Framework in ballot measure (per Addendum #1 to Settlement Framework) to be completed by July 2016
11		POA and Local 230 agree to oppose any third party litigation challenging the invalidation of Measure B through the quo warranto process either by joining the litigation or by petitioning to file an Amicus Brief.
12	Immediately upon (1) federated unions failing to reach pension settlement; (2) retirees not settling their litigation, or (3) quo warranto process not succeeding in invalidating Measure B	Craft ballot measure to implement all aspects of Settlement Framework

FOR THE CITY:


  
Norberto Dueñas  
City Manager

8/17/15  
Date

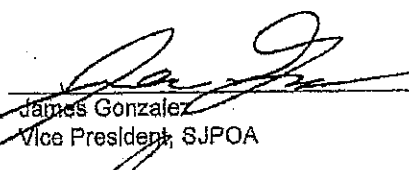
FOR THE UNION:

  
Paul Kelly  
President, SJPOA

Date

  
Jennifer Schembri  
Director of Employee Relations

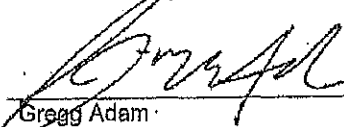
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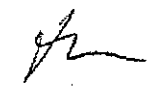
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Legal Counsel, IAFF, Local 230

Date

  
Tom Saggau  
SJPOA/IAFF, Local 230 Consultant

Date



# ADDENDUM #2 TO JULY 15, 2015 ALTERNATIVE PENSION REFORM SETTLEMENT FRAMEWORK

BETWEEN  
THE CITY OF SAN JOSE  
AND

THE SAN JOSE POLICE OFFICERS' ASSOCIATION (POA)  
THE INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 230 (IAFF)

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6	Immediately after #1	Parties negotiate charter language, pursuant to Addendum #1, simultaneous with agreement on stipulated facts, order and judgment.
7	Simultaneous with #6	Proposed Stipulated Facts, Order and Proposed Stipulated Judgment in quo warranto case  Outline of stipulated facts and findings: <ul style="list-style-type: none"> <li>history of negotiations including agreement on impasse as of 10/31, number of negotiation sessions, and use of mediation;</li> <li>changes to the proposed ballot language, including post-impasse changes;</li> <li>tension between City's powers and MMBA and effort to harmonize through Seal Beach negotiations—as described on pages 3-4 of Attorney General opinion No. 12-605.</li> </ul>

		<ul style="list-style-type: none"> <li>language from AG decision to grant QW based on the question of whether impasse had been broken by post-impasse ballot changes made by City and whether City Council needed to negotiate further (the inherent powers vs. MMBA issue);</li> <li>the cost and time and risks of litigating QW, including appeals and the issue of whether a decision in QW case would be universally applicable;</li> <li>the desirability of finding a solution that is collaborative</li> <li>financial challenges facing City and retirement funds - desire on part of employees, retirees and City to make benefits sustainable;</li> <li>Stipulated Order that City should have engaged in further negotiation of final language before putting on ballot to comply with MMBA obligations and failure to do so was a procedural defect significant enough to declare null and void Resolution placing Measure B on ballot; This order will not include a finding that the City acted in bad faith.</li> <li>Any additional language required by the court to allow the Court to approve the parties' Stipulated Order and Judgment. The Court order must be factually accurate.</li> <li>Agreement that Resolution No. 76158 shall be null and void.</li> <li>Overriding public interest in expedited resolution of quo warranto proceedings and implementation of Settlement Framework to restore and improve city services and sustainability of retirement plans.</li> <li>Stipulated Judgment shall reflect that Measure B shall be invalidated</li> </ul>
8	Upon completion of #6 and #7	Submission of Stipulated Order and Stipulated Judgment to quo warranto judge, which may require coordination with the Attorney General.
9	Upon entry of judgment in quo warranto case	<ul style="list-style-type: none"> <li>Formally adopt ordinances to implement Settlement Framework and replace Measure B.</li> <li>All parties dismiss/withdraw all complaints, unfair practice charges, etc.</li> </ul>
10	January 2016	Begin discussions over including any other provisions in Settlement Framework in ballot measure (per Addendum #1 to Settlement Framework) to be completed by July 2016
11		POA and Local 230 agree to oppose any third party litigation challenging the invalidation of Measure B through the quo warranto process either by joining the litigation or by petitioning to file an Amicus Brief.
12	Immediately upon: (1) federated unions failing to reach pension settlement; (2) retirees not settling their litigation, or (3) quo warranto process not succeeding in invalidating Measure B	Craft ballot measure to implement all aspects of Settlement Framework

FOR THE CITY:

  
Norberto Duñas  
City Manager


Date

8/17/15

FOR THE UNION:

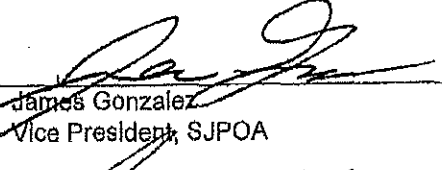
  
Paul Kelly  
President, SJPOA

Date

  
Jennifer Schembri  
Director of Employee Relations

Date


8/17/15

  
James Gonzalez  
Vice President, SJPOA

Date

Edgardo Garcia  
Assistant Chief of Police

Date

  
Gregg Adam  
SJPOA Counsel

Date

8-17-15


Charles Sakai  
Labor Consultant

Date

  
Joel Phelan  
President, IAFF, Local 230

Date


8/17/15

  
Sean Kaldor  
Vice President, IAFF, Local 230

Date

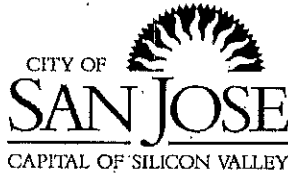
Christopher Platten  
Legal Counsel, IAFF, Local 230

Date

  
Tom Saggau  
SJPOA/IAFF, Local 230 Consultant

Date





## MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, AUGUST 25, 2015

The Council of the City of San José convened in Regular Session at 9:06 a.m. in the Council Chamber at City Hall.

Present: Council Members - Carrasco, Herrera, Jones, Kalra, Khamis, M. Nguyen, T. Nguyen, Oliverio, Peralez, Rocha, Liccardo.

Absent: Council Members - All Present.

### STRATEGIC SUPPORT SERVICES

#### 3.2 Accept Labor Negotiations Update.

There was no report.

### CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:12 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel pursuant to Government Code Section 54957 with respect to Public Employment/Public Employee Recruitment/Appointment: Title: City Auditor; Name: Sharon Erickson. (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9(d)(1) with respect to existing litigation: (1) IAFF Local 230 v. City of San José; Names of Parties Involved: International Association of Firefighters Local 230, City of San José; Court: State of California Public Employment Relations Board; Case No: SF-CE-969-M. Amount of Money or Other Relief Sought: Damages According to Proof. (2) IFPTE Local 21 v. City of San José; Names of Parties Involved: International Federation of Professional and Technical Engineers Local 21, City of San José; Court: State of California Public Employment Relations Board; Case No: SF-CE-996-M; Amount of Money or Other Relief Sought: Damages according to proof. (3) American Federation of State, County and Municipal Employees, et al. v. City; Names of Parties Involved: American Federation of State, County and Municipal Employees, City of San José; Court: State of California Public Employment Relations Board; Case No: SF-CE-924-M; Amount of Money or Other Relief Sought: Damages According to Proof. (4) OE#3 v. City of San José; Names of Parties Involved: Operating



## CLOSED SESSION (Cont'd.)

Engineers Local Union No. 3, City of San José; Court: State of California Public Employment Relations Board; Case No: SF-CE-900-M. (5) San José Police Officers' Association v. City, et al; Names of Parties Involved: San José Police Officers' Association, City of San José, Board of Administration for Police and Fire Department Retirement Plan of City of San José and Does 1-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-225926, H040979, H042074; Amount of Money or Other Relief Sought: Declaratory Relief and Verified Petition for Writ of Mandate. (6) San José Retired Employees Association, et al. v. City, et al; Names of Parties Involved: San José Retired Employees Association, Howard E. Fleming, Donald S. Macrae, Frances J. Olson, Gary J. Richert and Rosalinda Navarro, City of San José Does 1 – 50, Board of Administration for the Federated City Employees Retirement System; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-233660, H040979, H042074; Amount of Money or Other Relief Sought: Declaratory Relief and Verified Petition for Writ of Mandate. (7) Sapien, et al. v. City of San José, et al; Names of Parties Involved: Robert Sapien, Marty Kathleen McCarthy, Thanh Ho, Randy Sekany, Ken Heredia, City of San José, Debra Figone in her official capacity as City Manager of the City of San José, Does 1-15, The Board of Administration for the 1961 San José Police and Fire Department Retirement Plan; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-225928, H040979, H042074; Amount of Money or Other Relief Sought: Challenge to Measure B. (8) Harris, et al. v. City of San José, et al; Names of Parties Involved: Teresa Harris, Jon Reger, Moses Serrano, Suzann Stauffer, City of San José, Debra Figone in her official capacity as City Manager of the City of San José, The Board of Administration for the 1975 Federated City Employees' Retirement Plan, Does 1-15; Court: Superior Court of California, County of Santa Clara; Case: 1-12-CV-226570, H040979, H042074; Amount of Money or Other Relief Sought: Challenge to Measure B. (9) Mukhar, et al. v. City of San José, et al; Names of Parties Involved: John Mukhar, Dale Dapp, James Atkins, William Buffington, Kirk Pennington, City of San José, Debra Figone in her official capacity as City Manager of the City of San José, The Board of Administration for the 1975 Federated City Employees' Retirement Plan, Does 1-15; Court: Superior Court of California, County of Santa Clara; Case: 1-12-CV-226574, H040979, H042074; Amount of Money or Other Relief Sought: Challenge to Measure B. (10) AFSCME, et al. v. City of San José, et al; Names of Parties Involved: American Federation of State, County and Municipal Employees, Local 101 on behalf of its members, City of San José, The Board of Administration for the Federated City Employees' Retirement Plan; Court: Superior Court of California, County of Santa Clara; Case: 1-12-CV-225928, H040979, H042074; Amount of Money or Other Relief Sought: Challenge to Measure B. (11) People of the State of California, et al. v. City of San José, et al. Names of Parties Involved: The People of the State of California ex rel, San José Police Officers' Association, City of San José, City Council of San José; Court: Superior Court of the State of California for the County of Santa Clara; Case No: 1-13-CV-245503; Amount of Money or Other Relief Sought: Verified Complaint in Quo Warranto. (C) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Designee Jennifer Schembri; Director of Employee Relations; Employee Organizations: (1) Association of Building,

## CLOSED SESSION (Cont'd.)

Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI. (2) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA. (3) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP. (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP. (5) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO. (6) International Association of Firefighters, Local 230 (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters. (7) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW. (8) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (9) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (11) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc. Web: <http://www.sanjoseca.gov/?nid=186>; Telephone for Employee Relations: 408-535-8150. (D) to confer with Legal Counsel pertaining to the Successor Agency to the Redevelopment Agency of the City of San José due to initiation of litigation pursuant to subsection (d)(1) of Section 54956.9 of the Government Code in one (1) matter.

By unanimous consent, Council recessed from the Closed Session at 10:55 a.m. and reconvened to Regular Session at 1:33 p.m. in the Council Chamber.

Present: Council Members - Carrasco, Herrera, Jones, Kalra, Khamis, M. Nguyen, T. Nguyen, Oliverio (1:46 p.m.), Peralez, Rocha, Liccardo.

Absent: Council Members - All Present.

## INVOCATION

Aba Beza Gedifew, the Mekane Rama St. Gabriel Cathedral of the Ethiopian Orthodox Church offered the Invocation. (District 7)

## PLEDGE OF ALLEGIANCE

Mayor Sam Liccardo led the Pledge of Allegiance.

## ORDERS OF THE DAY

*Heard after Ceremonial Items.*

Upon motion by Vice Mayor Rose Herrera, seconded by Council Member Chappie Jones and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with Item 9.1 deferred to September 22, 2015. (11-0.)

## CEREMONIAL ITEMS

- 1.1 Presentation of a proclamation declaring August 26, 2015 as, "Women's Equality Day," in the City of San José. (Herrera)**

Mayor Sam Liccardo, Vice Mayor Rose Herrera and Council Member Magdalena Carrasco recognized August 26, 2015 as "Women's Equality Day" in San José.

- 1.2 Presentation of a commendation to Tim Quigley, outgoing president of the San José-Dublin Sister Cities Program for his many accomplishments during his three year term as president. (Mayor)  
(Rules Committee referral 8/19/15)**

Mayor Sam Liccardo, Vice Mayor Rose Herrera and Council Members Kalra, Khamis and Peralez recognized and commended Tim Quigley.

- 1.3 Presentation of a commendation to John Boncher, CEO of Cupertino Electric Inc. for their philanthropy and community impact to San José residents.  
(Carrasco/Peralez)  
(Rules Committee referral 8/19/15)**

Mayor Sam Liccardo, Council Member Magdalena Carrasco and Council Member Raul Peralez recognized and commended John Boncher, CEO of Cupertino Electric Inc.

## CONSENT CALENDAR

Upon motion by Vice Mayor Rose Herrera, seconded by Council Member Johnny Khamis and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (11-0)

### 2.1 Approval of minutes.

- (a) Regular Minutes of April 07, 2015.
- (b) Regular Minutes of April 14, 2015.
- (c) Study Session Minutes on the Medical Marijuana Program of April 20, 2015.
- (d) Regular Minutes of April 21, 2015.
- (e) Joint San José/Santa Clara Valley Water District Minutes of April 27, 2015.
- (f) Regular Minutes of April 28, 2015.

CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities.

Documents Filed: (1) The Regular Minutes dated April 07, 2015, April 14, 2015, April 21, 2015 and April 28, 2015. (2) The Study Session Minutes on the Medical Marijuana Program dated April 20, 2015. (3) The Joint San José/Santa Clara Valley Water District Minutes dated April 27, 2015.

Action: The City Council Minutes were approved. (11-0.)

### 2.2 Final adoption of ordinances.

- (a) **ORD. NO. 29601** – Amending Title 17 of the San José Municipal Code by adding Chapter 17.86 to specify requirements for solar energy systems and to provide an expedited, streamlined permitting process for small residential rooftop solar systems. CEQA: Exempt, Guidelines Section 15268. Ministerial Projects. File No. PP15-073.

Documents Filed: Proof of Publication of the Title of Ordinance No. 29601 executed on November 9, 2015, submitted by the City Clerk.

Action: Ordinance No. 29601 was adopted. (11-0.)

### 2.3 Approval of Council Committee Reports.

- (a) Rules and Open Government Committee Report of August 5, 2015. (Mayor)
- CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities.

Documents Filed: The Rules and Open Government Committee Report of August 5, 2015.

Action: The Rules and Open Government Committee Report dated August 5, 2015 was approved. (11-0.)

### 2.4 Mayor and Council Excused Absence Requests.

There were none.

**2.5 City Council Travel Reports.**

There were none.

**2.5 Report from the Council Liaison to the Retirement Boards.**

There were none.

**2.7 Adopt resolutions:**

(a) Authorizing the Director of Finance to negotiate and execute the following agreements with MuniServices LLC, a Delaware Limited Liability Company ("MuniServices") to provide:

(1) Sales and Use Tax revenue enhancement services and data analysis for the term of July 1, 2015 through June 30, 2018 at a maximum annual compensation not to exceed \$412,000, with two one-year options to extend through June 30, 2020, at the same rate of compensation for each additional optional year subject to the City Council's annual appropriation of funds.

(2) Telephone Line Tax, Utility Users Tax and Franchise Fee compliance services for the term of July 1, 2015 through June 30, 2018 at a maximum annual compensation not to exceed \$70,000, with two one-year options to extend through June 30, 2020, at the same rate of compensation for each additional optional year subject to the City Council's annual appropriation of funds.

(b) Authorizing MuniServices to examine all Sales and Use Tax records of the California State Board of Equalization for tax collection purposes and other governmental functions of the City of San José.

CEQA: Not a Project, File No. PP10-066(a), Agreements and Contracts. (Finance)  
(Deferred from 6/16/15 – Item 2.13 and 8/4/15 – Item 2.7)

Action: Deferred to September 01, 2015 per Administration.

**2.8 Approve a Second Amendment to the ALD Development Corp. dba Airport Lounge Development, Inc. ("ALD") Concession Agreement to extend the term to January 31, 2019 with total annual revenue to the City of approximately \$76,000. CEQA: Not a Project, File No. PP10-066(f), Lease of existing space for the same use. (Airport)**

Documents Filed: Memorandum from Director of Aviation Services Kimberly J. Becker, dated August 3, 2015, recommending approval of a second amendment.

Action: A Second Amendment to the ALD Development Corp. dba Airport Lounge Development, Inc. ("ALD") Concession Agreement to extend the term to January 31, 2019 with total annual revenue to the City of approximately \$76,000 was approved. (11-0.)

- 2.9 As recommended by the Rules and Open Government Committee on August 12, 2015, appoint Council Member Magdalena Carrasco to the San José Police Activities League Board. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (Mayor)  
[Rules Committee referral 8/12/15 – Item F(1)]

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated August 13, 2015, transmitting the recommendations of the Rules and Open Government Committee.

Action: Council Member Magdalena Carrasco was appointed to the San José Police Activities League Board. (11-0.)

- 2.10 As recommended by the Rules and Open Government Committee on August 12, 2015, approve the receipt of gifts received in official capacity in accordance with San José Municipal Code Section 12.08.040. CEQA: Exempt, Guidelines Section 15268. Ministerial Projects. File No. PP15-073. (Jones)  
[Rules Committee referral 8/12/15 – Item G(2)]

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated August 13, 2015, transmitting the recommendations of the Rules and Open Government Committee.

Action: The receipt of gifts received in official capacity in accordance with San José Municipal Code Section 12.08.040 for Council Member Chappie Jones was approved. (11-0.)

- 2.11 As recommended by the Rules and Open Government Committee on August 12, 2015, approve a grant of \$1,000 to the Martin-Fontana Parks Association to be paid from the budgeted District 10 SAP Center at San José allocation, which is funded by the Arena Community Fund City-Wide appropriation. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (Khamis)  
[Rules Committee referral 8/12/15 – Item G(3)]

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated August 13, 2015, transmitting the recommendations of the Rules and Open Government Committee.

Action: A grant of \$1,000 to the Martin-Fontana Parks Association to be paid from the budgeted District 10 SAP Center at San José allocation, which is funded by the Arena Community Fund City-Wide appropriation was approved. (11-0.)

- 2.12 As recommended by the Rules and Open Government Committee on August 12, 2015, approve a grant of \$1,000 to Branham High School for their Sports Booster Club to support student programs and activities, which is funded by the Arena Community Fund Citywide appropriation. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (Rocha)  
[Rules Committee referral 8/12/15 – Item G(4)]

## 2.12 (Cont'd.)

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated August 13, 2015, transmitting the recommendations of the Rules and Open Government Committee.

Action: A grant of \$1,000 to Branham High School for their Sports Booster Club to support student programs and activities, which is funded by the Arena Community Fund Citywide appropriation was approved. (11-0.)

- 2.13 As recommended by the Rules and Open Government Committee on August 19, 2015, adopt a resolution in support of the Fix Our Roads Coalition's goals for the California State Transportation Special Session. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (Mayor)  
[Rules Committee referral 8/19/15 – Item G(6)]

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated August 21, 2015, transmitting the recommendations of the Rules and Open Government Committee.

Action: Resolution No. 77502, entitled: "A Resolution of the Council of the City of San José Urging the State of California to Provide New Sustainable Funding For State and Local Transportation Infrastructure", was adopted. (11-0.)

## END OF CONSENT CALENDAR

## STRATEGIC SUPPORT SERVICES

- 3.3 Discuss the policy alternatives for amending Council Policy 2-1 to establish guidelines for the permanent display of the POW/MIA (Prisoner-of-War/Missing-in-Action) flag at City Hall's West Plaza and direct City staff to amend the policy based on the selected alternative. CEQA: Not a Project, File No. PP10-068(c), Municipal Code or Policy change that involves not changes to the physical environment. (Public Works)  
(Referred from 6/23/15 – Item 3.24 and Deferred from 8/11/15 – Item 3.3)

Documents Filed: (1) Memorandum from Mayor Sam Liccardo, Vice Mayor Rose Herrera and Council Members Raul Peralez and Chappie Jones, dated August 21, 2015, recommending approval of the Staff recommendations to permanently display the POW/MIA Flag below the USA Flag at City Hall 365 days (Option One). (2) Memorandum from Director of Public Works Barry Ng, dated August 13, 2015, recommending discussing the policy alternatives for amending Council Policy 2-1. (3) Staff presentation dated August 25, 2015 summarizing Displaying the POW/MIA Flag.

Motion: Vice Mayor Rose Herrera moved approval of the memorandum she cosigned with Mayor Sam Liccardo and Council Members Raul Peralez and Chappie Jones described below in "Action." Council Member Chappie Jones seconded the motion.

### 3.3 (Cont'd.)

Director of Public Works Barry Ng presented the Staff report and responded to Council questions.

Mayor Sam Liccardo opened the floor for public testimony.

Public Comments: Expressing support to the motion on the floor were Dave Saunders, Vietnam Veterans of America; Vietnam J.D. Duenas, Vet Help Vet Brotherhood; Richard McCoy, Francis McVey, United Veterans Council; Frank Chavez, Michael Kelly, Veterans Supportive Services Agency; Jerry Arnold, Disabled American Veterans; Abel Ramos, American Legion Post 858 and James McMann, American Legion Willow Glen Post 318.

Council Members Peralez, Jones and Manh Nguyen expressed support to the motion on the floor.

Action: On a call for the question, the motion carried unanimously, the memorandum from Mayor Sam Liccardo, Vice Mayor Rose Herrera, Council Members Peralez and Jones, dated August 21, 2015, was approved, approving the Staff recommendation to permanently display the POW/MIA flag below the USA Flag at City Hall year round at 365 days. (11-0.)

### 3.4 Interview applicants and consider an appointment to fill one (1) Attorney-at-Law representative with an unexpired term ending November 30, 2018 on the Civil Service Commission. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (City Clerk)

Documents Filed: (1) Memorandum from City Clerk Toni J. Taber, CMC, dated August 14, 2015, recommending interviewing the applicant and consideration of an appointment. (2) Memorandum from City Attorney Richard Doyle, dated August 13, 2015, providing background on the Civil Service Commission Application for an Attorney member.

Action: Sharon Hightower, Attorney-a-Law was interviewed by the Mayor and Council members and appointed to an unexpired term ending November 30, 2018. (11-0.)

### 3.5 (a) Adopt a resolution to:

- (1) Approve the terms of the Alternative Pension Reform Settlement Framework Agreement between the City and the San José Police Officers' Association (SJPOA) and San José Fire Fighters, International Association of Fire Fighters, Local 230 (IAFF, Local 230).
- (2) Authorize the City Manager to negotiate and execute a Tripartite Retirement Memorandum Agreement between the City, the SJPOA, and IAFF, Local 230.



3.5 (b) **Adopt the following 2015-2016 Appropriation Ordinance amendments in the General Fund:**

- (1) **Establish a City-Wide Measure B Settlement appropriation to the City Manager's Office in the amount of \$1,500,000.**
- (2) **Decrease the Fiscal Reform Plan Implementation Reserve in the amount of \$1,500,000.**

**CEQA: Not a Project, File No. PP10-069(b), Personnel Related Decisions. (City Manager)**

**(Deferred from 8/11/15 – Item 3.4 and 8/18/15 – Item 3.4)**

Documents Filed: (1) Memorandum from Council Member Donald Rocha, dated August 7, 2015, recommending the Council approve the Staff recommendations. (2) Memorandum from Director of Employee Relations Jennifer Schembri and Senior Deputy City Manager Jennifer A. Maguire, dated July 24, 2015, recommending approval of the Alternative Pension Reform Settlement Framework Agreement, the memorandum of agreement and appropriation ordinance amendments. (3) Supplemental memorandum from Director of Employee Relations Jennifer Schembri, dated August 17, 2015, providing additional information. (4) Presentation Slides from the Office of the Mayor dated August 25, 2015. (5) Staff presentation dated August 25, 2015 describing the San José Police Officers' Association and International Association of Fire Fighters, Local 230 Alternative Pension Reform Settlement Framework.

Director of Employee Relations Jennifer Schembri offered the report.

Mayor Sam Liccardo opened the floor for public testimony

Public Comments: Speaking in support to the settlement agreement were Paul Kelly, James Gonzales, Police Officers' Association; Sean Kaldor, San José Fire Fighters Local 230 and Ross Signorino.

Mayor Sam Liccardo provided a brief presentation depicting estimated annual City retirement contributions projects for Police and Fire and Police Officer gross pay comparisons for Fiscal Year 2016-2017.

First Motion: Council Member Chappie Jones moved approval of the Staff recommendations including the Alternative Pension Reform Settlement Framework Agreement. Vice Mayor Rose Herrera seconded the motion.

Council Member Pierluigi Oliverio expressed opposition to the first motion on the floor.

Council discussion ensued.

Second Motion: Council Member Chappie Jones moved approved of the two supplemental memoranda. Vice Mayor Rose Herrera seconded the motion.

Council Member Pierluigi Oliverio expressed opposition to the second motion on the floor.

3.5 (Cont'd.)

Action: On a call for the question, both motions carried, Resolution No. 77503, entitled: "A Resolution of the Council of the City of San José Approving the Terms of the Alternative Pension Reform Settlement Framework Agreement With the San José Police Officers' Association and International Association of Fire Fighters, Local 230 and Authorizing the City Manager to Negotiate and Execute a Tripartite Retirement Memorandum of Agreement" and Ordinance No. 29609, entitled: "An Ordinance of the City of San José Amending Ordinance No. 29589 to Appropriate Monies in the General Fund for the Citywide Measure B Settlement; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", were adopted. (10-1. Noes: Oliverio.)

- 3.6 (a) Adopt a resolution approving the terms of a collective bargaining agreement between the City and the San José Police Officers' Association and authorizing the City Manager to execute an agreement with a term effective upon execution of the agreement through December 31, 2016.
- (b) Adopt the following 2015-2016 Appropriation Ordinance amendments in the General Fund:
- (1) Increase the Personal Services appropriation to the Police Department in the amount of \$9,545,000.
  - (2) Increase the Personal Services appropriation to the City Attorney's Office in the amount of \$20,000.
  - (3) Decrease the Police Department Staffing/Operations Reserve in the amount of \$9,100,000.
  - (4) Decrease the Salaries and Benefits Reserve in the amount of \$465,000.
- CEQA: Not a Project, File No PP10-069(b), Personnel Related Decisions. (City Manager)

Documents Filed: Memorandum from Director of Employee Relations Jennifer Schembri and Senior Deputy City Manager Jennifer A. Maguire, dated August 14, 2015, recommending adoption of a resolution and appropriation ordinance amendments.

Director of Employee Relations Jennifer Schembri presented a brief update.

Motion: Vice Mayor Rose Herrera moved approval of the Staff recommendations. Council Member Raul Peralez seconded the motion.

Council Member Pierluigi Oliverio expressed support to the motion on the floor.

Mayor Sam Liccardo opened the floor for public testimony

Public Comments: Shaunn Cartwright presented comments on the collective bargaining agreement between the City and the San José Police Officers' Association.

### 3.6 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, Resolution No. 77504, entitled: "A Resolution of the Council of the City of San José Approving an Agreement Between the City of San José and the San José Police Officers' Association with a Term Commencing Upon Execution of the Agreement to December 31, 2016" and Ordinance No. 29610, entitled: "An Ordinance of the City of San José Amending Ordinance No. 29589 to Appropriate Monies in the General Fund For the Personal Services Appropriations to the Police Department and the City Attorney's Office; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; were adopted. (11-0.)

## COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 Adopt a resolution directing the Interim Director of Housing to pursue steps necessary to acquire the Plaza Hotel located in San José at 96 South Almaden Boulevard ("Plaza Hotel") from the Successor Agency to the Redevelopment Agency of the City of San José (SARA), for housing the homeless, and return to City Council to obtain authorization to acquire. CEQA: Exempt, Guidelines Section 15301, Existing Facilities. (Housing)  
(Deferred from 6/16/15 – Item 4.2, et al, and 8/11/15 – Item 4.1)

Action: Deferred to September 22, 2015 per Administration.

- 4.2 (a) Adopt a resolution:
- (1) Approving an early disbursement of the existing \$8,000,000 construction-permanent loan commitment, in the form of a land acquisition loan, of up to \$5,000,000 that will refinance an existing land acquisition loan in order to support development of the Second Street Studio Apartments, an affordable multifamily rental development offering permanent supportive housing for the homeless to be located at 1140 South Second Street at Keyes Street ("Development") and developed by a legal affiliate of First Community Housing Corporation ("FCH" or "Developer").
  - (2) Approving an increase of up to a \$6,452,000 to the existing City Council-approved construction-permanent loan commitment of \$8,000,000, for a total of up to \$14,452,000 of Low and Moderate Income Housing Asset Funds to Developer.
  - (3) Approving an increase of up to \$500,000 to the existing predevelopment loan.

- 4.2 (b) Adopt the following Appropriation Ordinance amendments in the Low and Moderate Housing Asset Fund (346):
- (1) Increase the appropriation to the Housing Department for Housing Loans and Grants in the amount of \$5,000,000.
  - (2) Decrease the Housing Project Reserve appropriation in the amount of \$5,000,000.

CEQA: Mitigated Negative Declaration, File No. PDC07-086, adopted 8/26/2008. (Housing/City Manager)

Action: Deferred to September 15, 2015 per Administration.

- 4.3 Adopt a resolution initiating proceedings and setting September 15, 2015 at 1:30 p.m., for City Council consideration of the reorganization of territory designated as Story No. 65, which involves the annexation to the City of San José of an approximately 0.52 gross acre of land located on the west side of East Hills Drive, approximately 250 feet easterly of Dale Drive, and the detachment of the same from the appropriate special districts, including Central Fire Protection, CO Lighting County Service, County Sanitation District 2-3, and Area No. 01 (Library Services) County Service. CEQA: Envision 2040 General Plan Final Program EIR (Resolution No. 76041). Council District 5. (Planning, Building and Code Enforcement)

Documents Filed: City Council Action Request from Director of Planning, Building and Code Enforcement Harry Freitas, dated August 14, 2015, recommending adoption of a resolution.

Action: Upon motion by Council Member Johnny Khamis, seconded by Vice Mayor Rose Herrera and carried unanimously, Resolution No. 77505, entitled: "A Resolution of the Council of the City of San José Initiating Reorganization Proceedings for the Annexation and Detachment of Certain Uninhabited Territory Designated as Story No. 65, Described More Particularly Herein and Setting the Date, Time and Place for Consideration of Such Reorganization", was adopted. (11-0.)

- 4.4 (a) Adopt an interim ordinance of the City of San Jose, as an urgency measure, establishing a temporary moratorium on the conversion or closure of mobilehome parks pending the review and possible amendment of the land use regulations applicable to such conversions and closures and setting forth the findings to support (1) the need for the temporary moratorium; and (2) the need for the urgency measure.
- (b) Direct staff to refer to the Planning Commission for its review and recommendation, at its earliest possible regular meeting, a substantially similar ordinance establishing a temporary moratorium on the conversion or closure of mobilehome parks pending the review and possible amendment of the land use regulations applicable to such conversions and closures.

CEQA: Exempt, Guidelines Sections 15061(b)(3) No Significant Impact on the Environment and 15308 Actions by Regulatory Agencies for Protection of the Environment. (Housing/Planning, Building, and Code Enforcement)

#### 4.4 (Cont'd.)

Documents Filed: (1) Memorandum from Council Member Johnny Khamis, dated August 24, 2015, with direction to Staff. (2) Memorandum from Director of Planning, Building and Code Enforcement Harry Freitas and Interim Director of Housing Jacky Morales-Ferrand, dated August 21, 2015, recommending adoption of an interim ordinance and direction to Staff. (3) Letter from Diana Castillo, Senior Attorney, Fair Housing Law Project, Law Foundation of Silicon Valley, dated August 24, 2015, regarding the Mobilehome Park Conversion Moratorium.

Director of Planning, Building and Code Enforcement Harry Freitas provided introductory remarks.

Mayor Sam Liccardo opened the floor for public testimony.

Public Comments: Speaking in support to the Mobilehome Park Conversion Moratorium were David Tripp, Phyllis Tripp, Winchester Ranch Mobilehome Park; Katharine Turner, Winchester Ranch; Diana Castillo, Law Foundation of Silicon Valley; Bill Baron, Eric Brandenburg, Brandenburg, Staedler and Moore; Shaunn Cartwright, Gary Smith, Millpond Mobilehome Park; Mike Connolly, Richard Lawrence, Gail Osmer, Lee Ellak, Davlyn Jones, Marylou Clark, Martha O'Connell, Phil Olmstead, Erik Schoennauer, Debbi Cosentino, Stan Soles, Chris Giangreco, Reverend C. Lynn Bailey, Robert Aguirre, Brian Darby, Giau Huynh Nguyen, Ross Signorino and Karen Carpenter.

Motion: Council Member Chappie Jones moved approval of the Staff recommendations. Vice Mayor Rose Herrera seconded the motion.

Council Member Johnny Khamis requested to amend the motion to include his memorandum dated August 24, 2015. Council Member Chappie Jones and Vice Mayor Rose Herrera accepted Part (c) of Council Member Johnny Khamis' memorandum: direct Staff to meet with the Mobile Home Park Owners and residents as necessary to prepare an "Opt-In; Stay in Business" alternative *to be included* within a proposed work plan for Council consideration.

Council discussion ensued.

Council Member Raul Peralez objected to the motion on the floor.

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Substitute Motion: Council Member Raul Peralez moved approval of the Staff recommendations. Council Member Donald Rocha seconded the motion.

City Attorney Richard Doyle clarified that nine votes are needed for an urgency ordinance.

On a call for the question, the substitute motion failed. (7-4. Noes: Herrera, Jones, Khamis, Oliverio.)

#### 4.4 (Cont'd.)

Action: On a call for the question, the original motion carried unanimously, Ordinance No. 29611, entitled: "An Interim Ordinance of the City of San José Establishing a Temporary Moratorium on the Conversion or Closure of Mobilehome Parks Pending the Review and Possible Amendment of Land Use Regulations Applicable to Such Conversions and Closures and Setting Forth Findings to Support Such Temporary Moratorium", was adopted. Staff was directed to meet with the Mobile Home Park Owners and residents as necessary to prepare an "Opt-In; Stay in Business" alternative *to be included* within a proposed work plan for Council consideration. (11-0.)

### REDEVELOPMENT – SUCCESSOR AGENCY

- 9.1 (a) Approve the acquisition of 226 Balbach by the City from the Successor Agency to the Redevelopment Agency of the City of San José for \$2,400,000 from the Low and Moderate Income Housing Asset Fund to that the Housing Department can acquire the site and determine an appropriate future affordable housing development.
- (b) Adopt the following Appropriation Ordinance amendments in the Low and Moderate Income Housing Asset Fund:
- (1) Increase the appropriation to the Housing Department for Housing Loans and Grants by \$2,410,000.
  - (2) Decrease the Housing Project Reserve appropriation by \$2,410,000.

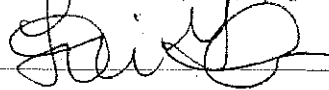
**CEQA: Determination of Consistency with Downtown Strategy 2000 EIR (Resolution No. 72767). Council District 3. (Housing/City Manager)**

Action: Deferred to September 22, 2015 per Orders of the Day.

### ADJOURNMENT

The Council of the City of San José was adjourned at 5:07 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,



Toni J. Taber, CMC  
City Clerk

smd/08-25-15 MIN

Access the video, the agenda and related reports for this meeting by visiting the City's website <http://www.sanjoseca.gov/civiccenter/tv>. For information on any ordinance that is not hyperlinked to this document, please contact the Office of the City Clerk at (408) 535-1266.



# **ALTERNATIVE PENSION REFORM SETTLEMENT FRAMEWORK**

## **(Evidence Code Section 1152)**

### **Settlement Discussion Framework Language**

*The City of San Jose, AFSCME, Local 101 (on behalf of its chapters, the Municipal Employees' Federation, the Confidential Employees' Organization), the Association of Engineers and Architects, the Association of Maintenance Supervisory Personnel, the City Association of Management Personnel, and the Operating Engineers, Local 3 ("the Litigants") have engaged in settlement discussions concerning litigation arising out of a voter-approved ballot measure, known as Measure B. The Litigants have reached the below framework for a tentative settlement of American Federation of State, County, and Municipal Employees v. City of San Jose, Santa Clara Superior Court, No. 1-12-CV-227864, Harris, et. Al. v. City of San Jose, et. al., Santa Clara County Superior Court, No. 1-12-CV-226570, Mukhar, et. Al. v. City of San Jose, Santa Clara County Superior Court, No. 1-12-CV-226574), International Federation of Professional and Technical Engineers vs. City of San Jose, Public Employment Relations Board Unfair Practice No. SF-CE-996-M, American Federation of State, County and Municipal Employees vs. City of San Jose, Public Employment Relations Board Unfair Practice No. SF-CE-924-M, Operating Engineers, Local 3 vs. City of San Jose, Public Employment Relations Board Unfair Practice No. SF-CE-900-M, and various other actions, including grievances. This settlement framework shall be presented for approval by the City Council and the respective Union Board of Directors.*



*Although the Association of Legal Professionals, the Association of Building, Mechanical, and Electrical Inspectors, and the International Brotherhood of Electrical Workers ("Non-Litigants") are not plaintiffs in a legal challenge to Measure B, these bargaining units also agree to the settlement framework as listed below and will present this framework to their members for approval. Litigants and Non-Litigants will be referred to collectively as "The Parties"*

*It is understood that this settlement framework is subject to a final overall global settlement. In the event the settlement framework is not accepted, all Parties reserve the right to modify, amend and/or add proposals. Each individual item contained herein is contingent on an overall global settlement/agreement being reached on all terms, by all Parties and other litigants (including the retirees), and ratified by union membership and approved by the City Council.*

## **Retirement Memorandum of Agreement**

1. The Parties (the City of San Jose, the Association of Building, Mechanical, and Electrical Inspectors (ABMEI), the Association of Engineers and Architects (AEA), the Association of Legal Professionals (ALP), the Association of Maintenance Supervisory Personnel (AMSP), the City Association of Management Personnel (CAMP), the Confidential Employees' Organization (CEO), the International Brotherhood of Electrical Workers (IBEW), the Municipal Employees' Federation (MEF), and the Operating Engineers, Local 3 (OE#3)) shall enter into a Retirement Memorandum of Agreement to memorialize all agreements related to retirement. The Retirement MOA shall expire June 30, 2025.
2. The Retirement MOA will be a binding agreement describing the terms of the final agreement between the parties (ABMEI, AEA, ALP, AMSP, CAMP,

CEO, IBEW, MEF and OE#3) and will be subject to any agreed-upon reopeners herein.

**The current Tier 2 retirement plans for Federated employees will be modified as follows:**

1. Pension benefit will be 2.0% per year of service
2. One year of service will be 2080 hours. Pensionable pay will be the same as Tier 1 employees.
3. Retirement Age
  - a. The eligible age for an unreduced pension benefit will be age 62
  - b. The eligible age for a reduced pension benefit will be age 55. The reduction for retirement before age 62 will be 5% per year, prorated to the closest month.
4. 70% cap
  - a. The maximum pension benefit will be 70% of an employee's final average salary
5. Three-year final average salary
6. A member is vested after 5 years of service
7. No retroactive defined benefit pension increases or decreases
  - a. Any such changes in retirement benefits will only be applied on a prospective basis.
8. No pension contribution holiday for the City or the employee
9. Final compensation means base pay actually paid to a member and shall not include premium pay or any other forms of additional compensation
10. Current Tier 2 Federated employees will retroactively be moved to the new Tier 2 retirement benefit plan except as provided in Paragraph 18 (returning Tier 1).

- a. Any costs, including any unfunded liability, associated with transitioning current Tier 2 employees into the restructured Tier 2 benefit will be amortized as a separate liability over a minimum of 20 years and split between the employee and the City 50/50. This will be calculated as a separate unfunded liability and not subject to the ramp up increments of other unfunded liability.
- 11. Removal of language limiting vesting of benefits from City Charter (Section 1508-A (h))
- 12. Tier 2 cost sharing
  - a. Employees and the City will split the cost of Tier 2 including normal cost and unfunded liabilities on a 50/50 basis
  - b. In the event an unfunded liability is determined to exist for the Federated Tier 2 retirement plan, Tier 2 employees will contribute toward the unfunded liability in increments of 0.33% per year until such time that the unfunded liability is shared 50/50 between the employee and the employer.
  - c. Until such time that the unfunded liability is shared 50/50, the City will pay the balance of the unfunded liability.
- 13. Cost of Living Adjustment (COLA)
  - a. Tier 2 retirees will receive an annual cost of living adjustment based on the Consumer Price Index – Urban Consumers (San Francisco-Oakland-San Jose, December to December) (“CPI”) or a back-loaded 2.0% COLA (as described below), whichever is lower. The back-loaded COLA shall be calculated as follows:
    - i. Service at retirement of 1-10 years: 1.25% per year
    - ii. Service at retirement of 11-20 years: 1.5% per year
    - iii. Service at retirement of 21-25 years: 1.75% per year
    - iv. Service at retirement of 26 years and above: 2.0% per year

- b. In the first year of pension benefits, the COLA will be pro-rated based on the date of retirement
- c. Current Tier 2 employees as of the date of this agreement will receive an annual cost of living adjustment of the lower of CPI (as defined above) or 1.5% per year for service at retirement of 1-10 years. After 10 years of service, employees will receive an annual cost of living adjustment in retirement pursuant to Section 13(a) above.

14. Disability Benefit (Tier 2)

- a. A Tier 2 member who is approved by the independent medical review panel for a service-connected disability retirement is entitled to a monthly allowance equal to:
  - i.  $2\% \times \text{Years of Service} \times \text{Final Compensation}$ , with a minimum of 40% and a maximum of 70% of Final Compensation.
- b. A Tier 2 member who is approved by the independent medical review panel for a non-service connected disability is entitled to a monthly allowance equal to:
  - i.  $2\% \times \text{Years of Service} \times \text{Final Compensation}$ , with a minimum of 20% and a maximum of 70% of Final Compensation.

15. If there is any Tier 1 or Tier 2 benefit not mentioned in this framework, the parties agree to meet to discuss whether or not that benefit should be included in the Tier 2 benefit.

16. Tier 2 members eligible for retirement will be provided with 50% Joint and Survivor benefits, which provide 50% of the retiree's pension to the retiree's surviving spouse or domestic partner in the event of the retiree's death after retirement.

- a. Tier 2 members eligible for retirement will be provided with survivor benefits in the event of death before retirement. These benefits will

be the same as Tier 1 members but reduced to reflect the new 70% pension cap versus the current 75% pension cap.

17. Tier 2 members not eligible for retirement at the time of death will be provided with survivor benefits of a return of employee contributions, plus interest in the event of death before retirement
18. Former Tier 1 Federated City employees who have been rehired since the implementation of Tier 2 or rehired after the effective date of a tentative agreement based on this framework will be placed in Tier 1
  - a. Any costs, including any unfunded liability, associated with transitioning current Tier 2 employees who were former Tier 1 City employees who have since been rehired will be amortized as a separate liability over a minimum of 20 years and split between the employee and the City 50/50. This will be calculated as a separate unfunded liability and as Tier 1 employees these members are not subject to a ramp up in unfunded liability.
  - b. Any lateral hire from any other pension system who transfers as a "Classic" employee under PEPRA, regardless of tier, will be placed in Tier 1.
  - c. Any lateral hire from any other pension system who transfers as a "new" employee under PEPRA will be placed in Tier 2.
19. Tier 2 members will be provided the same service repurchase options as Tier 1 members (excluding purchases of service credit related to disciplinary suspensions) so long as all costs for the repurchase are paid for by the employee.

**Retiree Healthcare - All provisions below are contingent on final costing by the City's Actuary and review for legal and/or tax issues**

1. The parties will implement a defined contribution healthcare benefit in the form of a Voluntary Employee Beneficiary Association (VEBA). The plans would not provide any defined benefit, would not obligate the City to provide any specific benefit upon member retirement, and therefore create no unfunded liability. This agreement does not require the City to contribute any future funds to an employee's VEBA, nor does it preclude an agreement to allow future City contributions
2. New lowest cost medical plan
  - a. Kaiser NCAL 4307 Plan (305/\$3,000 HSA-Qualified Deductible HMO Plan) will be adopted as the new lowest cost healthcare plan, for active and retired members
  - b. The City will continue the cost sharing arrangement for active employees of 85% of the lowest cost non-deductible HMO plan
  - c. "Floor": The "lowest cost plan" for any current or future retiree in the defined benefit retirement healthcare plan shall be set that it may not be lower than the "silver" level as specified by the current Affordable Care Act in effect at the time of this agreement. This "Floor" specifically includes the provision that the healthcare plan must be estimated to provide at least 70% of healthcare expenses as per the current ACA "silver" definition.
  - d. Any changes to the "Floor" shall be by mutual agreement only.
3. Potential Tier 1 opt-out
  - a. So long as it is legally permitted, Tier 1 employees may make a one-time election to opt-out of the defined benefit retiree healthcare

plan into an appropriate vehicle for the funds, i.e. a Voluntary Employee Beneficiary Association (VEBA). Members of the current defined benefit plans will be provided with one irrevocable opportunity to voluntarily "opt out" of the current retiree medical plan. Those members who "opt out," and are thus not covered by the City defined benefit retiree medical plan, will be mandated to join the VEBA plan.

4. Continue enrollment in Medicare Parts A and B as required by any applicable federal regulations or by insurance providers. The enrollment period for Medicare Parts A and B shall begin three months before the retiree's 65th birthday, continue through the month of birth, and conclude three months after the retiree's 65<sup>th</sup> birthday.
5. The current defined benefit retiree healthcare plan is modified to enable retired members to select an "in lieu" premium credit option. At the beginning of each plan year, retirees can choose to receive a credit for 25% (twenty-five percent) of the monthly premium of the lowest priced healthcare and dental plan as a credit toward future member healthcare premiums in lieu of receiving healthcare coverage. On an annual basis, or upon qualifying events described in the "special enrollment" provisions of the Health Insurance Portability and Accountability Act of 1996, retirees and their spouses/dependents can elect to enroll in a healthcare plan or continue to receive an "in lieu" premium credit. Enrollees receiving in lieu credit at any tier other than retiree only must verify annually that they are still eligible for the tier for which they are receiving the in lieu credit. If a member selects the "in-lieu" premium credit, but the member, their survivor or beneficiaries never uses their accumulated premium credit, the accumulated credit is forfeited. At no time can a member or

survivor/beneficiary take the credit in cash or any form of taxable compensation. There is no cap on the size of the accumulated credit.

6. Members of the VEBA and their spouses/dependents, during retirement, may also elect to enter or exit unsubsidized coverage on an annual basis or upon a qualifying event (however, members in the VEBA will not receive an "in lieu" benefit).
7. The VEBA contribution rate for all members who opt out of the defined benefit plan and are mandated to join the VEBA plan will be 4.5% of base pay.
8. Any former Tier 1 employee who was rehired into Tier 2 will be treated as Tier 1 for pension and Tier 2 for retiree healthcare.
9. All Tier 2A employees (except those represented by OE#3) will mandatorily be removed from the Defined Benefit retirement healthcare plan and will be mandated to contribute 2% of base pay to the VEBA. ***This will occur as soon as practical from implementation of the agreement and does not need to wait for implementation of any other retiree healthcare provision.*** The City may transfer funds from the 115 Trust to the members' VEBA plan account to the extent permitted by federal tax law and subject to receipt of a favorable private letter ruling. If this occurs, an amount estimated to equal the member's prior retiree healthcare contribution, with no interest included, will be contributed to the VEBA.
10. Tier 2A employees represented by OE#3, so long as it is legally permitted, may make a one-time election to opt-out of the defined benefit retiree healthcare plan into an appropriate vehicle for the funds, i.e. a Voluntary Employee Beneficiary Association (VEBA). Members of the current defined benefit plans will be provided with one irrevocable opportunity to voluntarily "opt out" of the current retiree medical plan. Those members who "opt out," and are thus not covered by the City defined



benefit retiree medical plan, will be mandated to join the VEBA plan. Tier 2A employees represented by OE#3 who remain in the Defined Benefit retirement healthcare plan will contribute 7.5% of their pensionable payroll into the plan. The VEBA contribution rate for all Tier 2A employees represented by OE#3 who opt out of the defined benefit plan and are mandated to join the VEBA plan will be 4.5% of base pay.

11. All Tier 2B employees will be mandated to contribute 2% of base pay to the VEBA.
12. All Tier 2C employees will be automatically removed from the dental benefit plan and will be mandated to contribute 2% of base pay to the VEBA. ***This will occur as soon as practical from implementation of the agreement and does not need to wait for implementation of any other retiree healthcare provision.*** The City may transfer funds from the 115 Trust to the members' VEBA plan account to the extent permitted by federal tax law and subject to receipt of a favorable private letter ruling. If this occurs, an amount estimated to equal the member's prior retiree healthcare contribution, with no interest included, will be contributed to the VEBA.
13. Members who remain in the Defined Benefit retirement healthcare plan will contribute 7.5% of their pensionable payroll into the plan. The City will contribute the additional amount necessary to ensure the Defined Benefit retirement healthcare plan receives its full Annual Required Contribution each year. If the City's portion of the Annual Required Contribution reaches 14% of payroll, the City may decide to contribute a maximum of 14%.
14. The parties have been advised that the difference between the defined benefit contribution rate (7.5%) and the VEBA opt-out contribution rate (4.5%) will be taxable income.

15. Upon making such an irrevocable election to opt-out of the defined benefit retiree healthcare plan, an amount estimated to equal the member's prior retiree healthcare contribution, with no interest included, will be contributed by the City to the member's VEBA plan account (pending costing and tax counsel advice). In making these contributions, the City may transfer funds from the 115 Trust to the members' VEBA plan account to the extent permitted by federal tax law and subject to receipt of a favorable private letter ruling. If it is determined by the IRS that the funds may not come out of the 115 trust, the parties will meet and confer regarding the opt-out and whether or not it can be implemented through other means. In addition, if the amount needed based on the number of employees who chose to opt out is more than the funds in 115 trust, the parties will also meet and confer. Members will be provided with individual, independent financial counseling to assist them with any decisions to remain in or "opt out" of the defined benefit retiree medical plan.
16. Pending legal review by tax counsel, deferred-vested Tier 1 members who return to San José will be given a one-time irrevocable option to "opt out" of the defined benefit retirement healthcare option. Upon choosing to "opt out", they will become a member of the VEBA and their VEBA account will be credited for an amount estimated to equal the member's prior retiree healthcare contribution, with no interest included. If they choose not to "opt out", they will return to the Defined Benefit retirement healthcare plan.
17. Catastrophic Disability Healthcare Program –Members of the VEBA who receive service-connected disability retirements will be eligible for 100% of the single premium for the lowest cost plan until the member is eligible for Medicare (usually age 65).

- a. Qualifications - The member must not be eligible for an unreduced service retirement.
- b. The member must exhaust any funds in their VEBA account prior to becoming eligible for the Catastrophic Disability Healthcare Program.
- c. Upon reaching Medicare eligibility, the benefit will cease
- d. Any retiree who qualifies must submit on an annual basis an affidavit verifying that they have no other employment which provides healthcare coverage.
- e. If a retiree is found to have other employment which provides healthcare coverage, their eligibility to participate in the Catastrophic Disability Healthcare Program will automatically cease, subject to re-enrollment if they subsequently lose said employment-provided healthcare coverage.

### **Disability Definition and Process**

- 1. Reinstate the previous City definition for disability for all Federated employees.
- 2. Applications for disability must be filed within one month of separation from City service subject to the exceptions reflected in Municipal Code §3.28.1240
- 3. All applicants must submit medical paperwork indicating the initial nature of their disability including the affected body part if applicable, the current level of disability, and current treatments underway. Such medical paperwork must be filed within one year of separation unless the independent medical review panel grants a longer deadline due to extenuating circumstances.

4. Applications for disability may not be deferred by the applicant past four (4) years of the date of application submittal, unless the independent medical review panel grants a longer deadline due to extenuating circumstances.
5. The member and the City may have legal representation at hearings.
6. Independent panel of experts appointed by 4 of 7 retirement board members will evaluate and approve or deny disability retirement applications
  - a. Using the established Request for Proposal process, the retirement boards will recruit potential members of the independent medical panel.
  - b. Each member shall have a four-year term and meet the following minimum qualifications:
    - i. 10 years of practice after completion of residency
    - ii. Practicing or retired Board Certified physician
    - iii. Not a prior or current City employee
    - iv. No experience providing the City or retirement boards with medical services, except for prior service on medical panel
    - v. No experience as a Qualified Medical Evaluator or Agreed Medical Evaluator
    - vi. Varying medical experience
  - c. A panel of three independent medical experts will decide whether to grant or deny all disability applications, whether service or non-service connected. The panel's decision will be made by majority vote.
  - d. Upon its own motion or request, the independent medical panel may determine the status of a disability retirement recipient to

confirm that the member is still incapacitated or if the member has the ability to return to work.

7. Administrative law judge

- a. A decision to grant or deny the disability retirement made by the independent medical panel may be appealed to an administrative law judge.
- b. Applicant or City has forty-five (45) days to appeal a decision made by the independent medical panel. The appeal hearing must commence within ninety (90) days of the notice of appeal, unless a later date is mutually agreed to by the parties.
- c. The decision rendered by the administrative law judge is to be based on the record of the matter before the independent medical review panel.
- d. The decision of the administrative law judge will be a final administrative decision within the meaning of Section 1094.5 of the California Code of Civil Procedure.

8. Workers' Compensation Offset

- a. The workers' compensation offset currently in place for Federated Plan participants will continue for Tier 1 and Tier 2.

**Supplement Retiree Benefit Reserve (SRBR)**

1. Continue elimination of SRBR

- a. The funds credited to the SRBR will continue to be credited to the Federated City Employees' Retirement System to pay for pension benefits

2. City will replace SRBR with guaranteed purchasing power (GPP) provision for all Tier 1 retirees, prospectively. The GPP is intended to

maintain the monthly allowance for Tier 1 retirees at 75% of purchasing power effective with the date of the retiree's retirement

- a. Beginning January 2016 and each January thereafter, a retiree's pension benefit will be recalculated annually to determine whether the benefit level (including any increases due to cost of living adjustments) has kept up with inflation as measured by the CPI-U (San Francisco-Oakland-San Jose). The actual benefit level will be compared to what would have been required to maintain the same purchasing power as the retiree had at the time of retirement, with a CPI-based increase.
- b. Those Tier 1 retirees whose benefit falls below 75% of purchasing power will receive a supplemental payment that shall make up the difference between their current benefit level and the benefit level required to meet the 75% GPP.
- c. The supplemental GPP payment to qualifying retirees will be paid annually in a separate check, beginning February 2016, and each February thereafter.
- d. The number of Tier 1 retirees whose benefit level was below 75% GPP at the time of costing was approximately 68.
- e. In the event of litigation by a retired member or members of the Federated bargaining units challenging this provision of the Settlement Agreement against a Federated bargaining unit, the Unions will have a right to tender the defense of the litigation to the City. City will accept the defense of the litigation and will defend the Federated bargaining unit with counsel of City's choice, including the City Attorney's Office. If the City is also named defendant in any such suit, Unions will not claim that joint representation of either or both of them and the City constitutes a legal conflict for the

attorney(s) defending the suit. This defense obligation will not apply to lawsuits challenging or in any way relating to this provision filed more than five years after the effective date of this agreement.

### **Attorney's Fees**

1. \$1.257 million to the litigants (AFSCME-MEF and CEO; IFPTE Local 21-AEA, AMSP and CAMP; and OE#3) within 30 days of the settlement framework being approved by Council in open session.
  - a. AFSCME (MEF and CEO) shall not be entitled to any more in Attorneys' Fees and expenses related to the litigation and resolution of Measure B, and are not entitled to final and binding arbitration regarding Attorney's Fees.
  - b. The City and IFPTE Local 21 (AEA, AMSP and CAMP) and OE#3 agree to final and binding arbitration to resolve additional claims over attorneys' fees and expenses related to the litigation and resolution of Measure B.
    - i. The arbitration will be before a JAMS judge formerly of San Francisco or Alameda County
    - ii. The City shall pay the arbitrator's fees and costs, including court reporter
    - iii. The parties agree that the issue presented shall be: Whether IFPTE Local 21 (AEA, AMSP and CAMP) and OE#3 are entitled, under binding statutory or common law basis, to additional attorneys' fees and/or expenses related to litigation and resolution of Measure B? If so, in what amounts?

## Quo Warranto/Ballot Measure Implementation Plan

1. The Federated bargaining units (ABMEI, AEA, ALP, AMSP, CAMP, CEO, IBEW, MEF and OE#3) agree to work collaboratively with the City to develop a ballot measure, which, if the quo warranto process (as defined in the Settlement Framework and Proposed Quo Warranto Implementation Plan) succeeds, will supersede Measure B with the following (1) a provision requiring voter approval of defined benefit pension enhancements, (2) a provision requiring actuarial soundness, (3) a provision prohibiting retroactivity of defined benefit pension enhancements, and (4) any other provisions contained in the Settlement Framework that the parties mutually agree to, for inclusion in a 2016 ballot measure that will incorporate any such provisions into the City Charter. Once the parties mutually agree to the language, all the Federated bargaining units shall endorse the ballot measure.
2. As agreed upon by the City and the Federated bargaining units (ABMEI, AEA, ALP, AMSP, CAMP, CEO, IBEW, MEF and OE#3), the proposed quo warranto implementation plan shall be followed by the parties in the manner described below.

Step	Time	Action
1	Immediately upon signature of the Framework by the litigants	Parties ask for a stay in appellate proceedings (Lucas ruling). AFSCME (MEF and CEO), IEPTC (AEA, AMSP and CAMP), and OE#3 will also ask for a stay in the PERB proceedings until March 31, 2016. So long as the quo warranto process is still ongoing, the stay will be continued on a quarterly basis until the conclusion of the quo warranto process.
2	Upon ratification of Federated/Retirees Deal	Global Settlement Addendum Agreement on quo warranto process: <ul style="list-style-type: none"><li>• Global settlement involving all litigants (including retirees) and bargaining unit representatives</li><li>• Entered into for purposes of settlement</li></ul>



		<ul style="list-style-type: none"> <li>• Except as otherwise provided in the stipulated order and judgment described below no admission of wrongdoing, including no admission that the City acted in bad faith</li> <li>• Non-precedential for any purpose</li> </ul>
3.	Immediately after #2	Begin drafting ordinances. Begin identifying ordinances implemented as a result of Measure B.
5	Immediately after #2	Parties negotiate charter language, pursuant to Section 1 above under "Quo Warranto/Ballot Measure Implementation Plan," simultaneous with agreement on stipulated facts, order and judgment.
6	Simultaneous with #5	<p>Although the Federated Bargaining Units are not parties to the pending litigation in Santa Clara Superior Court Case No. 1-13-CV-245503 ("Quo Warranto Case"), the Federated Bargaining Units will support the City and SJPOA's Proposed Stipulated Facts, Order and Proposed Stipulated Judgment in the Quo Warranto Case (for purposes of settlement only)</p> <p>Outline of stipulated facts and findings:</p> <ul style="list-style-type: none"> <li>• history of negotiations including agreement on impasse as of 10/31, number of negotiation sessions, and use of mediation;</li> <li>• changes to the proposed ballot language, including post-impasse changes;</li> <li>• tension between City's powers and MMBA and effort to harmonize through Seal Beach negotiations—as described on pages 3-4 of Attorney General opinion No. 12-605.</li> <li>• language from AG decision to grant QW based on the question of whether impasse had been broken by post-impasse ballot changes made by City and whether City Council needed to negotiate further (the inherent powers vs. MMBA issue);</li> <li>• the cost and time and risks of litigating QW, including appeals and the issue of whether a decision in QW case would be universally applicable;</li> <li>• the desirability of finding a solution that is collaborative</li> <li>• financial challenges facing City and retirement funds - desire on part of employees, retirees and City to make benefits sustainable;</li> <li>• Stipulated Order that City should have engaged in further negotiation of final language before putting on ballot to comply with MMBA obligations and failure to do so was a procedural defect significant enough to declare null and void Resolution placing Measure B on ballot; This order will not include a finding that the City acted in bad faith.</li> </ul>

# ALTERNATIVE PENSION REFORM SETTLEMENT FRAMEWORK

Evidence Code Section 1152

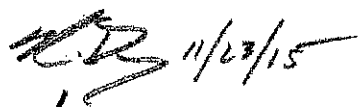

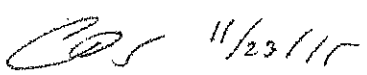
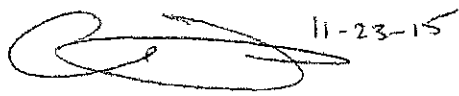
November 23, 2015


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		<ul style="list-style-type: none"> <li>Any additional language required by the court to allow the Court to approve the parties' Stipulated Order and Judgment. The Court order must be factually accurate.</li> <li>Agreement that Resolution No. 76158 shall be null and void.</li> <li>Overriding public interest in expedited resolution of quo warranto proceedings and implementation of Settlement Framework to restore and improve city services and sustainability of retirement plans.</li> </ul> <p>Stipulated Judgment shall reflect that Measure B shall be invalidated.</p>
7.	Upon completion of #5 and #6	<ul style="list-style-type: none"> <li>Submission of Stipulated Order and Stipulated Judgment to quo warranto judge, which may require coordination with the Attorney General.</li> </ul>
8.	Upon entry of judgment in quo warranto case	<ul style="list-style-type: none"> <li>Formally adopt ordinances to implement Settlement Framework and replace Measure B.</li> <li>At such time as the judgment becomes final and the Quo Warranto Issues, or the voters pass a substitute measure supported by the Parties, all parties dismiss/withdraw all complaints, unfair practice charges, etc.</li> </ul>
9.	January 2016	<ul style="list-style-type: none"> <li>Begin discussions over including any other provisions in Settlement Framework in ballot measure (per Section 1 above under "Quo Warranto/Ballot Measure Implementation Plan) to be completed by July 2016</li> </ul>
10.	Third Party Litigation	All Federated bargaining units (except ALP) agree to oppose any third party litigation challenging the invalidation of Measure B through the quo warranto process either by joining the litigation or by petitioning to file an Amicus Brief.
11.	Immediately upon: (1) retirees not settling their litigation; or (2) quo warranto process not succeeding in Invalidating Measure B	Craft ballot measure to implement all aspects of Settlement Framework agreed to by the Federated bargaining units for placement on the ballot in November 2016. The Parties will begin this process immediately in January 2016 if either the retirees have not settled or the quo warranto process has not been completed.

This settlement framework is an outline of the agreement reached by the parties that will need to be implemented through various means, such as ordinances. Successful implementation of this agreement will satisfy and terminate the "Retirement (Pension and Retiree Healthcare) Reopener" agreed upon by the Federated bargaining units.

The Federated Bargaining Units and the City shall in good faith work toward implementing this agreement, and neither party shall take any action to undermine or subvert the terms and benefits provided by this agreement.

 11/23/15	MB 11/23/15
	dep 11/23/15
QEM 11/23/15	ZWT 11/23/15
 11/23/15	yae 11/23/15
	 11-23-15

Mano Murado for JS 11/23/15	JLC 12-3-15
MM 11/23/15	VMT 12-3-15
LC 11/23/15	SV 12/4/15
 12/4/15	TCF 12/14/15 ABMEI





## Memorandum

TO: HONORABLE MAYOR  
AND CITY COUNCIL

FROM: Jennifer Schembri  
Jennifer A. Maguire

SUBJECT: SEE BELOW

DATE: December 4, 2015

Approved

Date

12/4/15

**SUBJECT: APPROVAL OF THE TERMS OF THE ALTERNATIVE PENSION REFORM SETTLEMENT FRAMEWORK AGREEMENT CONCERNING THE LITIGATION ARISING OUT OF MEASURE B WITH BARGAINING UNITS REPRESENTING EMPLOYEES IN THE FEDERATED CITY EMPLOYEES' RETIREMENT SYSTEM AND MODIFICATIONS FOR EMPLOYEES IN UNIT 99 AND UNITS 81/82; AND RELATED APPROPRIATION ACTIONS**

### RECOMMENDATION

(a) Adopt a resolution to:

- (1) Approve the terms of the Federated Alternative Pension Reform Settlement Framework agreement ("Framework") between the City and bargaining units representing employees in the Federated City Employees' Retirement System ("Federated Bargaining Units");
  - (i) Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43)
  - (ii) Association of Legal Professionals (ALP)
  - (iii) Association of Maintenance Supervisory Personnel, IFPTE Local 21 (AMSP)
  - (iv) City Association of Management Personnel, IFPTE Local 21 (CAMP)
  - (v) Confidential Employees' Organization, AFSCME Local 101 (CEO)
  - (vi) International Brotherhood of Electrical Workers, Local No. 332 (IBEW)
  - (vii) Municipal Employees' Federation, AFSCME Local 101 (MEF)
  - (viii) International Union of Operating Engineers, Local No. 3 (OE#3);
- (2) Authorize the City Manager to negotiate and execute a Retirement Memorandum of Agreement between the City and Federated Bargaining Units listed above; and
- (3) Approve the modifications for unrepresented employees in Unit 99 and Units 81/82 similar to those in the Federated Alternative Pension Reform Settlement Framework except for those provisions specified herein.

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- (b) Adopt the following 2015-2016 Appropriation Ordinance amendments in the General Fund:
- (1) Increase the City-Wide Measure B Settlement appropriation to the City Manager's Office in the amount of \$1,257,000; and
  - (2) Decrease the Retiree Healthcare Solutions Reserve in the amount of \$1,257,000.

## **OUTCOME**

Approval of the terms of the Federated Alternative Pension Reform Settlement Framework agreement, authorization for the City Manager to negotiate and execute the Retirement Memorandum of Agreement between the City and specific bargaining units representing employees in the Federated City Employees' Retirement System; and approval of modifications for unrepresented employees in Unit 99 and Units 81/82 similar to those in the Federated Alternative Pension Reform Settlement Framework except for those provisions specified herein.

## **BACKGROUND**

The City of San Jose is currently in litigation with bargaining units representing employees in the Federated City Employees' Retirement System, as well as the San Jose Police Officers' Association (SJPOA) and the San Jose Fire Fighters, International Association of Fire Fighters, Local 230 (IAFF, Local 230), and a retiree group, over the pension reform ballot measure known as Measure B. Specifically, the American Federation of State, County and Municipal Employees (AFSCME) on behalf of the Municipal Employees' Federation (MEF) and Confidential Employees' Organization (CEO); the International Federation of Professional and Technical Engineers (IFPTE) on behalf of the Association of Engineers and Architects (AEA), the Association of Maintenance Supervisory Personnel (AMSP) and the City Association of Management Personnel (CAMP); and the International Union of Operating Engineers, Local No. 3 (OE#3), are litigants in the Measure B litigation.

Measure B was approved by the voters on June 5, 2012, and has subsequently been the subject of various forms of litigation. In an effort to settle these cases for budget stability and to provide certainty to the City's workforce, the City Council directed the City Administration to make any and all reasonable efforts to reach and implement a settlement this year.

The City and the SJPOA and IAFF, Local 230 reached an agreement on an Alternative Pension Reform Settlement Framework on July 15, 2015, which was approved by City Council in open session on August 25, 2015, after ratification by the SJPOA and IAFF, Local 230 memberships.

In April 2015, settlement discussions with the bargaining units representing employees in the Federated City Employees' Retirement System ("Federated Bargaining Units") commenced. In addition to the litigants, the Association of Building, Mechanical, and Electrical Inspectors (ABMEI); the Association of Legal Professionals (ALP); and the International Brotherhood of Electrical Workers (IBEW), were also engaged in the Measure B settlement discussions, even though these three bargaining units were not parties to the Measure B litigation.

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The City and the Federated Bargaining Units, except for ABMEI, reached an agreed upon settlement on a Federated Alternative Pension Reform Settlement Framework ("Framework" or "Settlement Framework"). The attached Framework presents a path toward the settlement of litigation over Measure B. The settlement framework is subject to a final overall global settlement with all parties related to the Measure B litigation, including retirees.

ABMEI did not agree to the terms of the Settlement Framework and thus the terms described herein do not apply to employees represented by ABMEI. Notwithstanding any action by the Court regarding Measure B, retirement benefits shall remain status quo for employees represented by ABMEI, including but not limited to the current Tier 2 pension benefits and Tier 1 and Tier 2A retiree healthcare. This means that, among other things, for employees represented by ABMEI, current Tier 2 members will not be eligible for the modified benefit of the revised Tier 2; new and former employees represented by ABMEI shall be placed into the current Tier 2 (including retirement age of 65, and a COLA tied to CPI with a 1.5% maximum); the retiree healthcare rates will increase effective December 21, 2015, from 8.76% to 10.47% per a prior agreement with ABMEI, and employees represented by ABMEI are subject to any subsequent increases to retiree healthcare contributions as determined by the Retirement Board; and employees represented by ABMEI in Tier 1 and Tier 2A are not eligible to opt-out of the current retiree healthcare defined benefit plan.

In summary, the Federated Alternative Pension Reform Settlement Framework will:

- Settle significant litigation with AFSCME (MEF and CEO), IFPTE (AEA, AMSP and CAMP) and OE#3 with the Framework's alternative strategy to pension reform. This agreement should avoid further litigation costs with these groups. The Framework will also update the retirement benefits for other employees in the Federated City Employees' Retirement System, including ALP, IBEW and unrepresented employees in Unit 99 and Units 81/82, to be consistent with the terms of the Framework.
- Over the next 30 years, provide savings of approximately \$1.3 billion from the revised Tier 2 compared to Tier 1 (\$940.8 million), the revised retiree healthcare program compared to the current retiree healthcare program (\$249.9 million), and from the elimination of the Supplemental Retiree Benefit Reserve (SRBR) (\$120 million).
- Modify Tier 2 pension benefits for non-sworn employees to levels similar to other Bay Area agencies to attract and retain non-sworn employees, providing a competitive Tier 2 pension benefit at a reduced cost. The new Tier 2 benefit has several differences from the California Public Employees' Retirement System (CalPERS) second tier benefit (the Public Employees' Pension Reform Act, or PEPR) that reduce costs. For example, the annual Cost of Living Adjustment ("COLA") is back-loaded so that the more years of service an employee has, the higher COLA rate they receive, which is a significant difference from the Tier 2 benefit in other agencies and reduces the cost of the Tier 2 benefit. This also incentivizes longevity. This Tier 2 benefit also has a straight 2% accrual rate each year (same as the current Tier 2) and a maximum benefit of 70%.

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- Allow Tier 1 employees who left the City and either subsequently have returned or return in the future to return into the Tier 1 benefit, incentivizing employees who have left to return to City service.
- Preserve 50/50 risk sharing with employees through the cost sharing of a 50/50 split in normal costs and any future unfunded liability associated with the Tier 2 benefit. In other agencies, the cost sharing is just 50/50 of normal cost.
- Close the retiree healthcare and dental defined benefit plan (hereafter collectively referred to as "retiree healthcare") to new and current Tier 2 employees, and allow an opt-out for Tier 1 employees, into a defined contribution Voluntary Employee Beneficiary Association (VEBA) subject to legal and IRS approval. The VEBA has no employer contribution and is completely funded by the employee. Because the VEBA has a lower contribution rate than the existing defined benefit plan, it reduces retiree healthcare costs for Tier 1 employees and increases their take home pay, while reducing the City's liability for retiree healthcare. In addition, while new and current Tier 2 employees will be mandated to make contributions into a VEBA (other than unrepresented Tier 2 employees), this creates a safeguard for these employees to have funds set aside for retiree healthcare. It should be noted that Tier 2 employees represented by OE#3 who were previously making contributions into the defined benefit retiree healthcare plan will have the option to opt-out or stay in the plan, similar to Tier 1 employees. Additionally, new and current Tier 2 employees in Unit 99 and Units 81/82 will not be mandated to make contributions into a VEBA.
- Implement a new lowest cost healthcare plan in order to reduce retiree healthcare costs.
- Allow retirees with alternate healthcare coverage to receive a 25% credit applicable towards future premiums instead of being covered by the City's healthcare in order to reduce costs (similar to "in lieu" programs commonly used for active employees).
- Reinstate the Federated City Employees' Retirement System's previous definition of disability which is comparable to other agencies.
- Create an Independent Medical Panel appointed by the Federated Retirement Board which will determine disability eligibility instead of the Federated Retirement Board. The agreement creates a process and minimum qualifications for the Independent Medical Panel.
- Continue the elimination of the SRBR from the Federated City Employees' Retirement System, solidifying \$4 million a year in General Fund savings.
- Allow for an agreement on a ballot measure in 2016 to include the following issues in the City Charter:
  - Actuarial soundness;
  - Voters' ability to vote on any defined benefit pension enhancements;
  - No retroactive defined benefit pension enhancements;
  - Any other provisions contained in the Framework that the parties may mutually agree to.



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- As previously noted, ABMEI did not agree to the Framework and thus the terms described above do not apply to employees represented by ABMEI. Retirement benefits shall remain status quo for employees represented by ABMEI, including but not limited to the current Tier 2 pension benefits and retiree healthcare.

The below chart depicts the realized savings from Measure B and retirement reform as shown to the Council during the January 20, 2015, Study Session regarding General Fund Structural Budget Deficit History and Service Restoration Priorities and Strategies:

Retirement Reform Estimate	GF Savings
<b>Implemented</b>	
SRBR Elimination	\$13 M
Retiree Healthcare Changes (lowest cost plan)	\$7 M
New Tier 2 Retirement Plans	\$5 M
<i>Subtotal Implemented</i>	<i>\$25 M</i>

The Settlement Framework preserves these savings, including \$4 million from the continued SRBR elimination for the Federated City Employees' Retirement System (the remaining \$9 million is attributable to the Police and Fire Department Retirement Plan). The exception is the increased cost for the revised Tier 2 benefit. In the first year of the revised Tier 2 Federated pension benefit, the cost is estimated to increase from the current Tier 2 by \$900,000.

The Alternative Pension Reform Settlement Framework has not yet been ratified by the Federated Bargaining Units' respective memberships, but ratification votes will occur before the December 15, 2015, City Council meeting.

## ANALYSIS

A complete copy of the Federated Alternative Pension Reform Settlement Framework is attached (Attachment A). The following is *only a summary* of the key provisions of the Framework applicable to employees in the Federated City Employees' Retirement System; however, as previously noted, the terms of the Framework do not apply to employees represented by ABMEI. Additionally, unless specifically noted, the terms below also apply to unrepresented employees in the Federated City Employees' Retirement System.

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**Retirement  
Memorandum  
of Agreement**

A Retirement Memorandum of Agreement ("Retirement MOA") between the City and bargaining units representing employees in the Federated City Employees' Retirement System will be finalized to memorialize all agreements related to retirement.

The term of the Retirement MOA shall be July 1, 2015 – June 30, 2025.

**Revised Tier 2**

In order to address recruitment and retention issues, this agreement modestly increases the Tier 2 benefits; however, the City's portion of the Normal Cost will go from 5.74% to an estimated 7.1%, which is still drastically lower than the City's portion of the Normal Cost for Tier 1, which is 17.08%.

Employees hired on or after the effective date of the ordinance implementing these changes will be subject to the following pension benefits. Any current Tier 2 members will be retroactively placed in the revised Tier 2.

**Pension Formula Accrual Rate**

2.0% per year of service (same as current Tier 2).

**Maximum Benefit**

The above accrual rate is subject to a maximum of 70% of final compensation.

**Final Compensation**

Average annual earned pay of the highest three consecutive years of service (same as current Tier 2).

**Minimum Service**

Tier 2 employees shall be eligible for a service retirement after earning five (5) years of retirement service credit and meeting the age requirement (same as current Tier 2).

**Normal Age of Retirement**

Employees shall be eligible to retire at age 62 with at least five (5) years of retirement service credit.

Employees will have the ability to retire at age 55 with a 5% reduction per year below age 62, prorated to the closest month.

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**Revised Tier 2**  
**(cont'd)**

**Retiree Cost of Living Adjustment (COLA)**

Plan members shall receive a cost of living adjustment of the lower of (1) the increase in the consumer price index, or CPI (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December); or (2) a back-loaded 2.0% COLA as described below:

<b>Service at Retirement</b>	<b>COLA</b>
1-10 years	1.25% per year
11-20 years	1.5% per year
21-25 years	1.75% per year
26 years and above	2.0% per year

The first COLA will be prorated based on the number of months retired.

**No Retroactive Pension Increases or Decreases**

Any future changes in pension benefits will be on a prospective basis only.

**Current Tier 2 Employees**

Except for employees who were previously in Tier 1, the employees currently in Tier 2 in the Federated City Employees' Retirement System will be retroactively moved to this revised Tier 2 benefit.

Any costs, including unfunded liabilities associated with moving the current Tier 2 employees into the revised structures, will be shared between the employees and the City on a 50/50 basis with no ramp up and amortized as a separate liability over a minimum of 20 years.

**Vesting Language**

The City will remove the language currently contained in City Charter Section 1508-A referring to limiting vesting of benefits.

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**Revised Tier 2**  
**(cont'd)**

**Cost Sharing**

Employees and the City will share equally in all costs of Tier 2 to the pension plan, including all normal costs and unfunded liabilities (same as current Tier 2).

If an unfunded liability exists for Tier 2 members, employees will contribute based on a "ramp up" to paying 50% of the liability. In years where an unfunded liability exists, the member contribution will be increased by increments of 0.33% per year until such time that the contribution associated with the unfunded liability is shared 50/50. Until such time, the City will pay the balance of the contribution associated with the unfunded liability of the Tier 2 plan.

For example, if the unfunded liability contribution rate of the Federated Tier 2 plan is 2% for three years, the following ramp-up schedule will occur:

Year	Total UAL Rate	City UAL Rate	Employee UAL Rate
1	2.00%	1.67%	.33%
2	2.00%	1.34%	.66%
3	2.00%	1.01%	.99%

**Disability Benefits**

Plan members eligible for a disability retirement benefit shall receive a monthly allowance benefit equal to  $2.0\% \times \text{Years of Service} \times \text{Final Compensation}$ , with the following minimum and maximum benefit for those eligible for a service-connected disability retirement benefit and for those eligible for a non-service connected disability retirement benefit.

$2.0\% \times \text{Years of Service}$ $\times \text{Final Compensation}$	Minimum	Maximum
Service-connected disability retirement	40%	70%
Non-service connected disability retirement	20%	70%

**Survivorship Benefits**

The survivorship benefits for Tier 2 shall be the same as the survivorship benefits for Tier 1; however, these benefits will be reduced to reflect the 70% pension benefit maximum.

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**Revised Tier 2**  
**(cont'd)**

**Rehired Employees/New Hires From Outside Agencies**

Former City Tier 1 employees who have been rehired since the implementation of the current Federated Tier 2 plans, or rehired after the effective date of this agreement, will return to Tier 1. Any lateral hires that are defined as "Classic" members under the Public Employees' Pension Reform Act (PEPRA), regardless of the tier of their previous employer, will also become Tier 1 members. Employees who are considered "new" employees under PEPRA will enter the revised Tier 2 plan.

The costs associated with the transition of these current Tier 2 employees into Tier 1 will be shared between the employees and the City on a 50/50 basis with no ramp up. This will be a separate liability amortized over 20 years.

**Service Credit Purchases**

Tier 2 members shall be eligible to make the same service credit purchases as Tier 1, with the exception of purchases of service credit related to suspension. All costs associated with service credit purchases will be paid for by the Tier 2 member.

**Tier 2 Costing**

The below chart indicates the difference in the current Tier 1 and Tier 2 pension normal cost rates for Fiscal Year 2015-2016 in comparison to the revised Tier 2 estimated normal cost based on calculations by the City's actuary, Bartel Associates. The retirement board's actuary, Cheiron, will be asked to calculate the final contribution rates. Please refer to Attachment B.

Normal Cost	Current Tier 1	Current Tier 2	Agreement Tier 2
Total	23.41%	11.48%	14.2% New T2 / 14.3% Current T2
City	17.08%	5.74%	7.1%
Member	6.33%	5.74%	7.1%

The City's actuary estimates that the savings between the revised Tier 2 benefit and the current Tier 1 normal cost would be \$940.8 million over 30 years.

**Retiree**  
**Healthcare**

The current retiree healthcare and dental defined benefit program will be closed to new employees and current Tier 2 employees (except as noted below). Tier 1 employees who were rehired into Tier 2 will be treated as Tier 1 for pension and Tier 2 for retiree healthcare, until we can offer rehires the option to opt-out pursuant to section 16 of the Alternative Pension Reform Settlement Framework.

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**Retiree**  
**Healthcare**  
**(cont'd)**

**Voluntary Employee Beneficiary Association (VEBA)**

The City will implement a defined contribution retiree healthcare benefit in the form of a VEBA.

New and current Tier 2 members shall contribute 2% of base pay to the VEBA. There will be no City contribution into the VEBA.

Tier 2 employees represented by OE#3 who were previously making contributions into the defined benefit retiree healthcare plan will have the option to opt-out or stay in the plan, similar to Tier 1 employees below.

Unrepresented new and current Tier 2 employees in Unit 99 and Units 81/82 will not be mandated to make contributions into a VEBA.

**New Lowest Cost Medical Plan**

Effective after the final overall agreement is reached, the Kaiser NCAL 4307 Plan shall be available to all active employees in the Federated City Employee's Retirement System, in addition to the existing plan options for active employees. This new plan will reduce the total premium payment by an estimated \$178 for single coverage and an estimated \$535 for family coverage per month. The Kaiser 4307 Plan has a \$3000 deductible and qualifies for a Health Savings Account (HSA).

The current cost sharing arrangement of the City paying 85% of the lowest cost non-deductible HMO plan will continue for active employees but active employees have the option of selecting the new lowest cost healthcare plan. For retiree healthcare, the retirement plan pays 100% of the lowest cost plan available to active employees. The Kaiser 4307 Plan will be the lowest cost plan available to active employees after implementation.

The lowest cost plan for any future or current retirees will be set so that any plan may not be lower than the "silver" level of health insurance as specified by the current Affordable Care Act as of the date of the agreement "the floor". The "silver" plans are estimated to be 70% of healthcare expenses. During and after the term of the Retirement MOA changes to "the floor" will be by mutual agreement between the City and the bargaining units.

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**Retiree**  
**Healthcare**  
**(cont'd)**

**Opt-Out for all Tier 1 members, and for those Tier 2A employees who are represented by OE#3 who were previously making contributions into the defined benefit retiree healthcare and dental plan**

Upon compliance with legal and IRS requirements, all Tier 1 employees, and Tier 2A members represented by OE#3, who were previously making contributions into the defined benefit retiree healthcare and dental plan, will be offered a one-time, irrevocable election to opt-out of the current defined benefit retiree healthcare and dental plan and instead be placed in the VEBA. All Tier 1 employees, and Tier 2A employees represented by OE#3, who were previously making contributions into the defined benefit retiree healthcare and dental plan will be offered individual, independent financial counseling to assist with their decision.

If legally permissible, deferred vested rehires will also be offered a one-time irrevocable opt-out upon return to City employment.

All Tier 1 members, and Tier 2A members represented by OE#3, who were previously making contributions into the defined benefit retiree healthcare and dental plan, who choose to opt-out will contribute 4.5% of base pay to the VEBA. All Tier 1 members, and Tier 2A members represented by OE#3, who were previously making contributions into the defined benefit retiree healthcare and dental plan who elect to remain in the defined benefit plan will contribute 7.5% to the defined benefit plan. The difference between the 4.5% contribution to the VEBA and the 7.5% contribution to the plan will be taxable to the employee.

The City will contribute the amount necessary (when combined with the mandatory employee contributions) to ensure the defined benefit retiree healthcare plan receives the full Annual Required Contribution (ARC). City contributions will be expressed as a percentage of payroll for all bargaining unit members and the City will contribute based on all members (including Tier 2). If the City portion reaches 14% of payroll, the City may decide to contribute a maximum of 14%. In the unlikely event that the City's contribution rate falls below 7.5% during the term of the Retirement MOA the parties will meet to discuss this issue.

Subject to IRS approval, a Tier 1 member, or Tier 2A members represented by OE#3 who were previously making contributions into the defined benefit retiree healthcare and dental plan, who elects to opt-out of the defined benefit retiree healthcare and dental plan, will receive from the 115 retiree healthcare trust an amount estimated to equal the employee only contributions into the retiree healthcare and dental plan, with no interest included. These funds will be placed in the employee's VEBA.

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**Retiree**  
**Healthcare**  
**(cont'd)**

The City will be seeking an IRS private letter ruling regarding the funding of the VEBA through the 115 trust very soon after City Council approval. Should the City not receive a favorable ruling from the IRS or the amounts of funds returned to those employees who opt-out exceeds the amount of funds in the VEBA, the parties will meet and confer over the opt-out and whether or not it can be implemented through other means for Tier 1 employees who opt-out and Tier 2A and Tier 2C employees. Because Tier 2A and Tier 2C employees are being taken out of the defined benefit retiree healthcare plan now, the goal is to return their retiree healthcare contributions or, if necessary, put these employees back into the defined benefit retiree healthcare plan.

**Medicare Part A and B Enrollment**

The requirement that a member of the Federated City Employees' Retirement System to enroll in Medicare Part A and B shall continue, and shall be based on federal regulations and insurance provider requirements. The enrollment period for Medicare Parts A and B shall begin 3 months prior to the retiree's 65<sup>th</sup> birthday and conclude 3 months after the retiree's 65<sup>th</sup> birthday.

**Retiree Healthcare In-Lieu Premium Credit**

At the beginning of each plan year, a qualified retiree may choose to forego the defined benefit retiree healthcare plan and instead receive a 25% credit for the monthly premium of the lowest cost healthcare plan and dental plan. This credit may only be used for future City retiree healthcare premiums. Retirees may choose this option at the beginning of the plan year or upon a qualifying event. Retirees must verify dependent enrollment on an annual basis if they are receiving a credit for any tier other than single.

Accumulated credits that are never used by the retiree or survivor/beneficiary are forfeited. There is no cap on the amount of credit accumulated, and at no time can a member or survivor/beneficiary take the credit in cash or any form of taxable compensation.

Members in the VEBA are not eligible for this in-lieu benefit.

**Catastrophic Disability Healthcare Program (CDHP)**

VEBA members who receive a service-connected disability will be eligible for 100% of the single premium for the lowest cost healthcare plan until the member is eligible for Medicare (usually age 65). The member must not be eligible for an unreduced service retirement, must exhaust the funds in the VEBA before becoming eligible for the CDHP, and submit an affidavit on an annual basis verifying the member does not have employment that offers healthcare. A member may re-enroll in the CDHP if they lose employment that offers healthcare coverage before Medicare eligibility.



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**Retiree  
Healthcare  
(cont'd)**

**Unrepresented Employees in Unit 99 and Units 81/82**

Unrepresented new and Tier 2 employees (including Tier 1 rehires) in Unit 99 and Units 81/82 will not be eligible for the VEBA and thus will not be mandated to make contributions into a VEBA.

Subject to IRS approval, a Tier 2 employee (including Tier 1 rehires) in Unit 99 and Units 81/82 who were previously making contributions into the defined benefit retiree healthcare plan, will receive from the 115 retiree healthcare trust an amount estimated to equal the employee only contributions into the retiree healthcare plan, with no interest included. These funds will be placed in the employee's VEBA.

The City will be seeking an IRS private letter ruling regarding the funding of the VEBA through the 115 trust. Should the City not receive a favorable ruling from the IRS or the amounts of funds returned to those employees exceeds the amount of funds in the VEBA, it will be determined whether or not it can be implemented through other means.

**Retiree Healthcare Costing**

The City's actuary estimates that the changes in the lowest cost healthcare and the opt-out will lower the actuarial liability by 16%. The actuary assumed that 50% of those at younger ages with shorter service grading to 0% of those at older ages with longer service currently in the defined benefit plan will opt-out. Please refer to Attachment C.

AAL	Current Valuation	With Kaiser 4307 Plan	Agreement with Opt Out	Total \$ Impact	Total % Impact
Active	\$ 260.6	\$ 229.7	\$ 189.4	\$ (71.2)	(27%)
Inactive	404.4	370.3	370.3	(34.1)	(8%)
Total	664.9	600.0	559.7	(105.2)	(16%)

The City's actuary estimates that, over the next 30 years, the total dollar savings between the existing retiree healthcare plan and the new plan would be approximately \$249.9 million. It is important to note that the actual cost impact will be determined by the retirement board's actuary.

**Disability  
Definition  
and Process**

The City will reinstate the previous disability retirement definition for all employees in the Federated City Employees' Retirement System.

**Disability Process Deadlines**

Applications for disability retirement must be filed within one month of separation from City service rather than the previous one year time period. Exceptions contained in the Municipal Code will still apply. The applicants must submit medical paperwork including, but not limited to, the initial nature of the disability and current medical treatments. The medical paperwork must be

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**Disability**  
**Definition**  
**and Process**  
**(cont'd)**

filed within one (1) year of separation unless the independent medical review panel grants a longer deadline due to extenuating circumstances. Applications must not be deferred past four (4) years of the date of the application unless the independent medical review panel grants a longer deadline due to extenuating circumstances.

**Disability Hearing Process**

The Federated Board will appoint an independent medical review panel of three (3) experts to grant or deny disability retirement applications. The panel will make decisions based on a majority vote. The independent medical review panel may decide, based on its own motion or request from a member, to determine if a disability retirement recipient is capable of returning to work.

The appointment shall be approved by a vote of four (4) of seven (7) trustees.

Each member of the independent medical review panel will serve four year terms and meet the following minimum qualifications:

- I. 10 years of practice after completion of residency.
- II. Currently in practice or retired.
- III. Not a prior or current City employee.
- IV. No prior experience providing the City or retirement boards with medical services. The exception shall be prior service as an independent panel member seeking reappointment.
- V. No prior experience as a qualified medical examiner or agreed medical evaluator.
- VI. Varying types of medical practice experience.

**Administrative Law Judge (ALJ)**

Decisions to grant or deny a disability retirement made by the independent medical review panel may be appealed to an ALJ. Either the applicant or the City has forty-five (45) days to appeal the decision made by the independent medical review panel. The appeal hearing must happen within ninety (90) days of the notice of appeal, unless a later date is mutually agreed upon. The ALJ decision will be considered final.

**Supplement**  
**Retiree Benefit**  
**Reserve (SRBR)**

The elimination of the SRBR will continue.

**Guaranteed Purchasing Power (GPP)**

The SRBR will be replaced with a Guaranteed Purchasing Power provision for all current and future Tier 1 retirees, but the GPP will be applied prospectively after its implementation. The GPP is designed to maintain the monthly allowance for Tier 1 retirees at 75% of purchasing power effective the date of the retiree's retirement.

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**Supplement**  
**Retiree Benefit**  
**Reserve (SRBR)**  
**(cont'd)**

A retiree's pension benefit will be recalculated annually to determine if the allowance has kept up with inflation per the CPI-U. The actual benefit will be compared to what would have been required to maintain the same purchasing power at the time of retirement. If the benefit for Tier 1 retirees falls below 75%, a separate check will be issued to make up the difference, beginning in February 2016. The number of Tier 1 retirees who currently fall below 75% purchasing power is approximately 68.

The bargaining units representing employees in the Federated City Employees' Retirement System will have a right to tender defense of the litigation to the City in the event of litigation brought forward by a retired member or members of the bargaining units representing employees in the Federated City Employees' Retirement System, against bargaining units representing employees in the Federated City Employees' Retirement System challenging this settlement framework agreement.

**SRBR Costing**

By continuing the elimination of the SRBR, the City will solidify the \$4 million General Fund savings already achieved by the City as a result of Measure B. Assuming the savings of \$4 million continues annually, using simple arithmetic, the elimination of the SRBR is estimated to result in an approximate savings of \$120 million over 30 years. It should be noted that the calculation of the \$4 million was based on the information available to the City when the SRBR was initially eliminated. Please refer to Attachment D.

**Attorneys' Fees**

To settle attorneys' fees related to Measure B legal matters, the City shall pay the Federated litigant bargaining units \$1.257 million within thirty (30) days of the settlement framework agreement being approved by City Council.

For IFPTE (AEA, AMSP and CAMP) and OE#3 only, final and binding arbitration is available before a JAMS judge to resolve any additional claims for attorneys' fees related to Measure B litigation (including administrative proceedings) and resolution. AFSCME (MEF and CEO) is not entitled to arbitration for any additional claims for attorneys' fees.

**Quo Warranto/  
Ballot Measure  
Implementation  
Plan**

The Framework contains a quo warranto implementation plan to be followed by the City and the bargaining units representing employees in the Federated City Employees' Retirement System that is similar to the process agreed to with the SJPOA and IAFF, Local 230.

If the quo warranto process described in the Framework succeeds, the bargaining units representing employees in the Federated City Employees' Retirement System agree to work with the City on a 2016 ballot measure that will supersede Measure B and incorporate the following provisions:

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**Quo Warranto/  
Ballot Measure  
Implementation  
Plan (cont'd)**

- (1) A provision requiring voter approval of defined retirement benefit enhancements;
- (2) A provision requiring actuarial soundness;
- (3) A provision prohibiting retroactivity of defined retirement benefit enhancements; and
- (4) Any other provisions contained the Framework that the parties may mutually agree to.

If the quo warranto process is not successful in invalidating Measure B, the parties agree that the Framework will be implemented via a ballot measure in November 2016.

**EVALUATION AND FOLLOW-UP**

The City and the Federated Retirees' Association are continuing settlement discussions related to litigation arising out of Measure B. The goal of these discussions is to reach a global settlement with all parties to the litigation. The City Administration will continue to keep the Council apprised of any updates related to this matter as proceeding with the quo warranto process is contingent on reaching an agreement with all litigants.

As previously noted, the City and the SJPOA and IAFF, Local 230 reached an agreement on an Alternative Pension Reform Settlement Framework on July 15, 2015, which was approved by City Council in open session on August 25, 2015, after ratification by the SJPOA and IAFF, Local 230 memberships.

Once a decision has been made on the recommended process by which to enact this Settlement Framework agreement, the City Administration will bring it forward to City Council for consideration.

**PUBLIC OUTREACH/INTEREST**

This memorandum will be posted on the City's website in advance of the December 15, 2015, City Council Meeting.

**COORDINATION**

This memorandum was coordinated with the City Attorney's Office.

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### COST SUMMARY/IMPLICATIONS

Appropriation actions in the amount of \$1.257 million, funded from the Retiree Healthcare Solutions Reserve, are recommended as part of this memorandum to pay attorney's fees related to the settlement of Measure B. Although there is currently a Fiscal Reform Plan Implementation Reserve available that would otherwise be used as a funding source for the \$1.257 million action, the reserve funding level stands at only \$787,000 and will likely be needed to pay for additional attorney fees related to the implementation of the Police and Fire Department and Federated settlement frameworks. The use of the Retiree Healthcare Solutions Reserve is recommended instead to fund this settlement, as the Administration believes there will be sufficient funds remaining in this reserve after this action to provide for any further City retiree healthcare contribution rate funding needs that will be determined at a later date. The cost/savings estimates of each element of the framework are noted above and in the attachments, and it is estimated that, over 30+ years, the City will realize savings of approximately \$1.3 billion from the revised Tier 2 compared to Tier 1 (\$940.8 billion), the revised retiree healthcare program compared to the current retiree healthcare program (\$249.9 million), and from the elimination of the SRBR (\$120 million). With the exception of the SRBR, it is important to note that these estimates were done by the City's actuary and actual costs/savings will be determined by the Retirement Board's actuary.

### BUDGET REFERENCE

The table below identifies the fund and appropriations to fund the actions recommended as part of this memorandum.

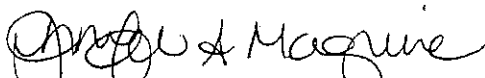
Fund #	Appn #	Appn. Name	Total Appn	2015-2016 Estimated Costs	2015-2016 Adopted Operating Budget Page	Last Budget Action (Date, Ord. No.)
001	3258	Measure B Settlement	\$1,500,000	\$1,257,000	N/A	8/25/15, 29609
001	8411	Retiree Healthcare Solutions Reserve	\$6,195,000	(\$1,257,000)	IX-58	6/23/15, 29589

### CEQA

Not a Project, File No. PP10-069(b), Personnel Related Decisions.



JENNIFER SCHEMBRI  
Director of Employee Relations



JENNIFER A. MAGUIRE  
Senior Deputy City Manager/  
Budget Director

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Attachment A – Federated Alternative Pension Reform Settlement Framework Agreement

Attachment B – Letter from John Bartel dated December 3, 2015 on Tier 2 Costing

Attachment C – Letter from John Bartel dated December 3, 2015 on Retiree Healthcare Costing

Attachment D – Letter from John Bartel dated December 3, 2015 on Guaranteed Purchasing Power

For questions, please contact Jennifer Schembri, Director of Employee Relations, at (408) 535-8150.

**ALTERNATIVE PENSION REFORM SETTLEMENT FRAMEWORK**  
**(Evidence Code Section 1152)**

**Settlement Discussion Framework Language**

*The City of San Jose, AFSCME, Local 101 (on behalf of its chapters, the Municipal Employees' Federation, the Confidential Employees' Organization), the Association of Engineers and Architects, the Association of Maintenance Supervisory Personnel, the City Association of Management Personnel, and the Operating Engineers, Local 3 ("the Litigants") have engaged in settlement discussions concerning litigation arising out of a voter-approved ballot measure, known as Measure B. The Litigants have reached the below framework for a tentative settlement of American Federation of State, County, and Municipal Employees v. City of San Jose, Santa Clara Superior Court, No. 1-12-CV-227864, Harris, et. Al. v. City of San Jose, et. al., Santa Clara County Superior Court, No. 1-12-CV-226570, Mukhar, et. Al. v. City of San Jose, Santa Clara County Superior Court, No. 1-12-CV-226574), International Federation of Professional and Technical Engineers vs. City of San Jose, Public Employment Relations Board Unfair Practice No. SF-CE-996-M, American Federation of State, County and Municipal Employees vs. City of San Jose, Public Employment Relations Board Unfair Practice No. SF-CE-924-M, Operating Engineers, Local 3 vs. City of San Jose, Public Employment Relations Board Unfair Practice No. SF-CE-900-M, and various other actions, including grievances. This settlement framework shall be presented for approval by the City Council and the respective Union Board of Directors.*

*Although the Association of Legal Professionals, the Association of Building, Mechanical, and Electrical Inspectors, and the International Brotherhood of Electrical Workers ("Non-Litigants") are not plaintiffs in a legal challenge to Measure B, these bargaining units also agree to the settlement framework as listed below and will present this framework to their members for approval. Litigants and Non-Litigants will be referred to collectively as "The Parties"*

*It is understood that this settlement framework is subject to a final overall global settlement. In the event the settlement framework is not accepted, all Parties reserve the right to modify, amend and/or add proposals. Each individual item contained herein is contingent on an overall global settlement/agreement being reached on all terms, by all Parties and other litigants (including the retirees), and ratified by union membership and approved by the City Council.*

## **Retirement Memorandum of Agreement**

1. The Parties (the City of San Jose, the Association of Building, Mechanical, and Electrical Inspectors (ABMEI), the Association of Engineers and Architects (AEA), the Association of Legal Professionals (ALP), the Association of Maintenance Supervisory Personnel (AMSP), the City Association of Management Personnel (CAMP), the Confidential Employees' Organization (CEO), the International Brotherhood of Electrical Workers (IBEW), the Municipal Employees' Federation (MEF), and the Operating Engineers, Local 3 (OE#3)) shall enter into a Retirement Memorandum of Agreement to memorialize all agreements related to retirement. The Retirement MOA shall expire June 30, 2025.
2. The Retirement MOA will be a binding agreement describing the terms of the final agreement between the parties (ABMEI, AEA, ALP, AMSP, CAMP,



CEO, IBEW, MEF and OE#3) and will be subject to any agreed-upon reopeners herein.

**The current Tier 2 retirement plans for Federated employees will be modified as follows:**

1. Pension benefit will be 2.0% per year of service
2. One year of service will be 2080 hours. Pensionable pay will be the same as Tier 1 employees.
3. Retirement Age
  - a. The eligible age for an unreduced pension benefit will be age 62
  - b. The eligible age for a reduced pension benefit will be age 55. The reduction for retirement before age 62 will be 5% per year, prorated to the closest month.
4. 70% cap
  - a. The maximum pension benefit will be 70% of an employee's final average salary
5. Three-year final average salary
6. A member is vested after 5 years of service
7. No retroactive defined benefit pension increases or decreases
  - a. Any such changes in retirement benefits will only be applied on a prospective basis.
8. No pension contribution holiday for the City or the employee
9. Final compensation means base pay actually paid to a member and shall not include premium pay or any other forms of additional compensation
10. Current Tier 2 Federated employees will retroactively be moved to the new Tier 2 retirement benefit plan except as provided in Paragraph 18 (returning Tier 1).

- a. Any costs, including any unfunded liability, associated with transitioning current Tier 2 employees into the restructured Tier 2 benefit will be amortized as a separate liability over a minimum of 20 years and split between the employee and the City 50/50. This will be calculated as a separate unfunded liability and not subject to the ramp up increments of other unfunded liability.
- 11. Removal of language limiting vesting of benefits from City Charter (Section 1508-A (h))
- 12. Tier 2 cost sharing
  - a. Employees and the City will split the cost of Tier 2 including normal cost and unfunded liabilities on a 50/50 basis
  - b. In the event an unfunded liability is determined to exist for the Federated Tier 2 retirement plan, Tier 2 employees will contribute toward the unfunded liability in increments of 0.33% per year until such time that the unfunded liability is shared 50/50 between the employee and the employer.
  - c. Until such time that the unfunded liability is shared 50/50, the City will pay the balance of the unfunded liability.
- 13. Cost of Living Adjustment (COLA)
  - a. Tier 2 retirees will receive an annual cost of living adjustment based on the Consumer Price Index – Urban Consumers (San Francisco-Oakland-San Jose, December to December) (“CPI”) or a back-loaded 2.0% COLA (as described below), whichever is lower. The back-loaded COLA shall be calculated as follows:
    - i. Service at retirement of 1-10 years: 1.25% per year
    - ii. Service at retirement of 11-20 years: 1.5% per year
    - iii. Service at retirement of 21-25 years: 1.75% per year
    - iv. Service at retirement of 26 years and above: 2.0% per year

- b. In the first year of pension benefits, the COLA will be pro-rated based on the date of retirement
- c. Current Tier 2 employees as of the date of this agreement will receive an annual cost of living adjustment of the lower of CPI (as defined above) or 1.5% per year for service at retirement of 1-10 years. After 10 years of service, employees will receive an annual cost of living adjustment in retirement pursuant to Section 13(a) above.

14. Disability Benefit (Tier 2)

- a. A Tier 2 member who is approved by the independent medical review panel for a service-connected disability retirement is entitled to a monthly allowance equal to:
  - i.  $2\% \times \text{Years of Service} \times \text{Final Compensation}$ , with a minimum of 40% and a maximum of 70% of Final Compensation.
- b. A Tier 2 member who is approved by the independent medical review panel for a non-service connected disability is entitled to a monthly allowance equal to:
  - i.  $2\% \times \text{Years of Service} \times \text{Final Compensation}$ , with a minimum of 20% and a maximum of 70% of Final Compensation.

15. If there is any Tier 1 or Tier 2 benefit not mentioned in this framework, the parties agree to meet to discuss whether or not that benefit should be included in the Tier 2 benefit.

16. Tier 2 members eligible for retirement will be provided with 50% Joint and Survivor benefits, which provide 50% of the retiree's pension to the retiree's surviving spouse or domestic partner in the event of the retiree's death after retirement.

- a. Tier 2 members eligible for retirement will be provided with survivor benefits in the event of death before retirement. These benefits will

be the same as Tier 1 members but reduced to reflect the new 70% pension cap versus the current 75% pension cap.

17. Tier 2 members not eligible for retirement at the time of death will be provided with survivor benefits of a return of employee contributions, plus interest in the event of death before retirement
18. Former Tier 1 Federated City employees who have been rehired since the implementation of Tier 2 or rehired after the effective date of a tentative agreement based on this framework will be placed in Tier 1
  - a. Any costs, including any unfunded liability, associated with transitioning current Tier 2 employees who were former Tier 1 City employees who have since been rehired will be amortized as a separate liability over a minimum of 20 years and split between the employee and the City 50/50. This will be calculated as a separate unfunded liability and as Tier 1 employees these members are not subject to a ramp up in unfunded liability.
  - b. Any lateral hire from any other pension system who transfers as a "Classic" employee under PEPR, regardless of tier, will be placed in Tier 1.
  - c. Any lateral hire from any other pension system who transfers as a "new" employee under PEPR will be placed in Tier 2.
19. Tier 2 members will be provided the same service repurchase options as Tier 1 members (excluding purchases of service credit related to disciplinary suspensions) so long as all costs for the repurchase are paid for by the employee.

**Retiree Healthcare - All provisions below are contingent on final costing by the City's Actuary and review for legal and/or tax issues**

1. The parties will implement a defined contribution healthcare benefit in the form of a Voluntary Employee Beneficiary Association (VEBA). The plans would not provide any defined benefit, would not obligate the City to provide any specific benefit upon member retirement, and therefore create no unfunded liability. This agreement does not require the City to contribute any future funds to an employee's VEBA, nor does it preclude an agreement to allow future City contributions
2. New lowest cost medical plan
  - a. Kaiser NCAL 4307 Plan (305/\$3,000 HSA-Qualified Deductible HMO Plan) will be adopted as the new lowest cost healthcare plan, for active and retired members
  - b. The City will continue the cost sharing arrangement for active employees of 85% of the lowest cost non-deductible HMO plan
  - c. "Floor": The "lowest cost plan" for any current or future retiree in the defined benefit retirement healthcare plan shall be set that it may not be lower than the "silver" level as specified by the current Affordable Care Act in effect at the time of this agreement. This "Floor" specifically includes the provision that the healthcare plan must be estimated to provide at least 70% of healthcare expenses as per the current ACA "silver" definition.
  - d. Any changes to the "Floor" shall be by mutual agreement only.
3. Potential Tier 1 opt-out
  - a. So long as it is legally permitted, Tier 1 employees may make a one-time election to opt-out of the defined benefit retiree healthcare

plan into an appropriate vehicle for the funds, i.e. a Voluntary Employee Beneficiary Association (VEBA). Members of the current defined benefit plans will be provided with one irrevocable opportunity to voluntarily "opt out" of the current retiree medical plan. Those members who "opt out," and are thus not covered by the City defined benefit retiree medical plan, will be mandated to join the VEBA plan.

4. Continue enrollment in Medicare Parts A and B as required by any applicable federal regulations or by insurance providers. The enrollment period for Medicare Parts A and B shall begin three months before the retiree's 65th birthday, continue through the month of birth, and conclude three months after the retiree's 65<sup>th</sup> birthday.
5. The current defined benefit retiree healthcare plan is modified to enable retired members to select an "in lieu" premium credit option. At the beginning of each plan year, retirees can choose to receive a credit for 25% (twenty-five percent) of the monthly premium of the lowest priced healthcare and dental plan as a credit toward future member healthcare premiums in lieu of receiving healthcare coverage. On an annual basis, or upon qualifying events described in the "special enrollment" provisions of the Health Insurance Portability and Accountability Act of 1996, retirees and their spouses/dependents can elect to enroll in a healthcare plan or continue to receive an "in lieu" premium credit. Enrollees receiving in lieu credit at any tier other than retiree only must verify annually that they are still eligible for the tier for which they are receiving the in lieu credit. If a member selects the "in-lieu" premium credit, but the member, their survivor or beneficiaries never uses their accumulated premium credit, the accumulated credit is forfeited. At no time can a member or

survivor/beneficiary take the credit in cash or any form of taxable compensation. There is no cap on the size of the accumulated credit.

6. Members of the VEBA and their spouses/dependents, during retirement, may also elect to enter or exit unsubsidized coverage on an annual basis or upon a qualifying event (however, members in the VEBA will not receive an "in lieu" benefit).
7. The VEBA contribution rate for all members who opt out of the defined benefit plan and are mandated to join the VEBA plan will be 4.5% of base pay.
8. Any former Tier 1 employee who was rehired into Tier 2 will be treated as Tier 1 for pension and Tier 2 for retiree healthcare.
9. All Tier 2A employees (except those represented by OE#3) will mandatorily be removed from the Defined Benefit retirement healthcare plan and will be mandated to contribute 2% of base pay to the VEBA. ***This will occur as soon as practical from implementation of the agreement and does not need to wait for implementation of any other retiree healthcare provision.*** The City may transfer funds from the 115 Trust to the members' VEBA plan account to the extent permitted by federal tax law and subject to receipt of a favorable private letter ruling. If this occurs, an amount estimated to equal the member's prior retiree healthcare contribution, with no interest included, will be contributed to the VEBA.
10. Tier 2A employees represented by OE#3, so long as it is legally permitted, may make a one-time election to opt-out of the defined benefit retiree healthcare plan into an appropriate vehicle for the funds, i.e. a Voluntary Employee Beneficiary Association (VEBA). Members of the current defined benefit plans will be provided with one irrevocable opportunity to voluntarily "opt out" of the current retiree medical plan. Those members who "opt out," and are thus not covered by the City defined

benefit retiree medical plan, will be mandated to join the VEBA plan. Tier 2A employees represented by OE#3 who remain in the Defined Benefit retirement healthcare plan will contribute 7.5% of their pensionable payroll into the plan. The VEBA contribution rate for all Tier 2A employees represented by OE#3 who opt out of the defined benefit plan and are mandated to join the VEBA plan will be 4.5% of base pay.

11. All Tier 2B employees will be mandated to contribute 2% of base pay to the VEBA.
12. All Tier 2C employees will be automatically removed from the dental benefit plan and will be mandated to contribute 2% of base pay to the VEBA. *This will occur as soon as practical from implementation of the agreement and does not need to wait for implementation of any other retiree healthcare provision.* The City may transfer funds from the 115 Trust to the members' VEBA plan account to the extent permitted by federal tax law and subject to receipt of a favorable private letter ruling. If this occurs, an amount estimated to equal the member's prior retiree healthcare contribution, with no interest included, will be contributed to the VEBA.
13. Members who remain in the Defined Benefit retirement healthcare plan will contribute 7.5% of their pensionable payroll into the plan. The City will contribute the additional amount necessary to ensure the Defined Benefit retirement healthcare plan receives its full Annual Required Contribution each year. If the City's portion of the Annual Required Contribution reaches 14% of payroll, the City may decide to contribute a maximum of 14%.
14. The parties have been advised that the difference between the defined benefit contribution rate (7.5%) and the VEBA opt-out contribution rate (4.5%) will be taxable income.



15. Upon making such an irrevocable election to opt-out of the defined benefit retiree healthcare plan, an amount estimated to equal the member's prior retiree healthcare contribution, with no interest included, will be contributed by the City to the member's VEBA plan account (pending costing and tax counsel advice). In making these contributions, the City may transfer funds from the 115 Trust to the members' VEBA plan account to the extent permitted by federal tax law and subject to receipt of a favorable private letter ruling. If it is determined by the IRS that the funds may not come out of the 115 trust, the parties will meet and confer regarding the opt-out and whether or not it can be implemented through other means. In addition, if the amount needed based on the number of employees who chose to opt out is more than the funds in 115 trust, the parties will also meet and confer. Members will be provided with individual, independent financial counseling to assist them with any decisions to remain in or "opt out" of the defined benefit retiree medical plan.
16. Pending legal review by tax counsel, deferred-vested Tier 1 members who return to San José will be given a one-time irrevocable option to "opt out" of the defined benefit retirement healthcare option. Upon choosing to "opt out", they will become a member of the VEBA and their VEBA account will be credited for an amount estimated to equal the member's prior retiree healthcare contribution, with no interest included. If they choose not to "opt out", they will return to the Defined Benefit retirement healthcare plan.
17. Catastrophic Disability Healthcare Program –Members of the VEBA who receive service-connected disability retirements will be eligible for 100% of the single premium for the lowest cost plan until the member is eligible for Medicare (usually age 65).

- a. Qualifications - The member must not be eligible for an unreduced service retirement.
- b. The member must exhaust any funds in their VEBA account prior to becoming eligible for the Catastrophic Disability Healthcare Program.
- c. Upon reaching Medicare eligibility, the benefit will cease
- d. Any retiree who qualifies must submit on an annual basis an affidavit verifying that they have no other employment which provides healthcare coverage.
- e. If a retiree is found to have other employment which provides healthcare coverage, their eligibility to participate in the Catastrophic Disability Healthcare Program will automatically cease, subject to re-enrollment if they subsequently lose said employment-provided healthcare coverage.

### **Disability Definition and Process**

- 1. Reinstate the previous City definition for disability for all Federated employees.
- 2. Applications for disability must be filed within one month of separation from City service subject to the exceptions reflected in Municipal Code §3.28.1240
- 3. All applicants must submit medical paperwork indicating the initial nature of their disability including the affected body part if applicable, the current level of disability, and current treatments underway. Such medical paperwork must be filed within one year of separation unless the independent medical review panel grants a longer deadline due to extenuating circumstances.

4. Applications for disability may not be deferred by the applicant past four (4) years of the date of application submittal; unless the independent medical review panel grants a longer deadline due to extenuating circumstances.
5. The member and the City may have legal representation at hearings.
6. Independent panel of experts appointed by 4 of 7 retirement board members will evaluate and approve or deny disability retirement applications
  - a. Using the established Request for Proposal process, the retirement boards will recruit potential members of the independent medical panel.
  - b. Each member shall have a four-year term and meet the following minimum qualifications:
    - i. 10 years of practice after completion of residency
    - ii. Practicing or retired Board Certified physician
    - iii. Not a prior or current City employee
    - iv. No experience providing the City or retirement boards with medical services, except for prior service on medical panel
    - v. No experience as a Qualified Medical Evaluator or Agreed Medical Evaluator
    - vi. Varying medical experience
  - c. A panel of three independent medical experts will decide whether to grant or deny all disability applications, whether service or non-service connected. The panel's decision will be made by majority vote.
  - d. Upon its own motion or request, the independent medical panel may determine the status of a disability retirement recipient to

confirm that the member is still incapacitated or if the member has the ability to return to work.

7. Administrative law judge
  - a. A decision to grant or deny the disability retirement made by the independent medical panel may be appealed to an administrative law judge.
  - b. Applicant or City has forty-five (45) days to appeal a decision made by the independent medical panel. The appeal hearing must commence within ninety (90) days of the notice of appeal, unless a later date is mutually agreed to by the parties.
  - c. The decision rendered by the administrative law judge is to be based on the record of the matter before the independent medical review panel.
  - d. The decision of the administrative law judge will be a final administrative decision within the meaning of Section 1094.5 of the California Code of Civil Procedure.
8. Workers' Compensation Offset
  - a. The workers' compensation offset currently in place for Federated Plan participants will continue for Tier 1 and Tier 2.

### **Supplement Retiree Benefit Reserve (SRBR)**

1. Continue elimination of SRBR
  - a. The funds credited to the SRBR will continue to be credited to the Federated City Employees' Retirement System to pay for pension benefits
2. City will replace SRBR with guaranteed purchasing power (GPP) provision for all Tier 1 retirees, prospectively. The GPP is intended to

maintain the monthly allowance for Tier 1 retirees at 75% of purchasing power effective with the date of the retiree's retirement

- a. Beginning January 2016 and each January thereafter, a retiree's pension benefit will be recalculated annually to determine whether the benefit level (including any increases due to cost of living adjustments) has kept up with inflation as measured by the CPI-U (San Francisco-Oakland-San Jose). The actual benefit level will be compared to what would have been required to maintain the same purchasing power as the retiree had at the time of retirement, with a CPI-based increase.
- b. Those Tier 1 retirees whose benefit falls below 75% of purchasing power will receive a supplemental payment that shall make up the difference between their current benefit level and the benefit level required to meet the 75% GPP.
- c. The supplemental GPP payment to qualifying retirees will be paid annually in a separate check, beginning February 2016, and each February thereafter.
- d. The number of Tier 1 retirees whose benefit level was below 75% GPP at the time of costing was approximately 68.
- e. In the event of litigation by a retired member or members of the Federated bargaining units challenging this provision of the Settlement Agreement against a Federated bargaining unit, the Unions will have a right to tender the defense of the litigation to the City. City will accept the defense of the litigation and will defend the Federated bargaining unit with counsel of City's choice, including the City Attorney's Office. If the City is also named defendant in any such suit, Unions will not claim that joint representation of either or both of them and the City constitutes a legal conflict for the

attorney(s) defending the suit. This defense obligation will not apply to lawsuits challenging or in any way relating to this provision filed more than five years after the effective date of this agreement.

### **Attorney's Fees**

1. \$1.257 million to the litigants (AFSCME-MEF and CEO; IFPTE Local 21-AEA, AMSP and CAMP; and OE#3) within 30 days of the settlement framework being approved by Council in open session.
  - a. AFSCME (MEF and CEO) shall not be entitled to any more in Attorneys' Fees and expenses related to the litigation and resolution of Measure B, and are not entitled to final and binding arbitration regarding Attorney's Fees.
  - b. The City and IFPTE Local 21 (AEA, AMSP and CAMP) and OE#3 agree to final and binding arbitration to resolve additional claims over attorneys' fees and expenses related to the litigation and resolution of Measure B.
    - i. The arbitration will be before a JAMS judge formerly of San Francisco or Alameda County
    - ii. The City shall pay the arbitrator's fees and costs, including court reporter
    - iii. The parties agree that the issue presented shall be: Whether IFPTE Local 21 (AEA, AMSP and CAMP) and OE#3 are entitled, under binding statutory or common law basis, to additional attorneys' fees and/or expenses related to litigation and resolution of Measure B? If so, in what amounts?

## Quo Warranto/Ballot Measure Implementation Plan

1. The Federated bargaining units (ABMEI, AEA, ALP, AMSP, CAMP, CEO, IBEW, MEF and OE#3) agree to work collaboratively with the City to develop a ballot measure, which, if the quo warranto process (as defined in the Settlement Framework and Proposed Quo Warranto Implementation Plan) succeeds, will supersede Measure B with the following (1) a provision requiring voter approval of defined benefit pension enhancements, (2) a provision requiring actuarial soundness, (3) a provision prohibiting retroactivity of defined benefit pension enhancements, and (4) any other provisions contained in the Settlement Framework that the parties mutually agree to, for inclusion in a 2016 ballot measure that will incorporate any such provisions into the City Charter. Once the parties mutually agree to the language, all the Federated bargaining units shall endorse the ballot measure.
2. As agreed upon by the City and the Federated bargaining units (ABMEI, AEA, ALP, AMSP, CAMP, CEO, IBEW, MEF and OE#3), the proposed quo warranto implementation plan shall be followed by the parties in the manner described below.

Step	Time	Action
1.	Immediately upon signature of the Framework by the litigants	Parties ask for a stay in appellate proceedings (Lucas ruling). AFSCME (MEF and CEO), IFPTE (AEA, AMSP and CAMP), and OE#3 will also ask for a stay in the PERB proceedings until March 31, 2016. So long as the quo warranto process is still ongoing, the stay will be continued on a quarterly basis until the conclusion of the quo warranto process.
2.	Upon ratification of Federated/Retirees Deal	Global Settlement Addendum Agreement on quo warranto process: <ul style="list-style-type: none"><li>• Global settlement involving all litigants (including retirees) and bargaining unit representatives</li><li>• Entered into for purposes of settlement</li></ul>

		<ul style="list-style-type: none"> <li>• Except as otherwise provided in the stipulated order and judgment described below no admission of wrongdoing, including no admission that the City acted in bad faith</li> <li>• Non-precedential for any purpose</li> </ul>
3	Immediately after #2	Begin drafting ordinances. Begin identifying ordinances implemented as a result of Measure B.
5	Immediately after #2	Parties negotiate charter language, pursuant to Section 1 above under "Quo Warranto/Ballot Measure Implementation Plan," simultaneous with agreement on stipulated facts, order and judgment.
6	Simultaneous with #5	<p>Although the Federated Bargaining Units are not parties to the pending litigation in Santa Clara Superior Court Case No. 1-13-CV-245503 ("Quo Warranto Case"), the Federated Bargaining Units will support the City and SJPOA's Proposed Stipulated Facts, Order and Proposed Stipulated Judgment in the Quo Warranto Case (for purposes of settlement only).</p> <p>Outline of stipulated facts and findings:</p> <ul style="list-style-type: none"> <li>• history of negotiations including agreement on impasse as of 10/31, number of negotiation sessions, and use of mediation;</li> <li>• changes to the proposed ballot language, including post-impasse changes;</li> <li>• tension between City's powers and MMBA and effort to harmonize through Seal Beach negotiations— as described on pages 3-4 of Attorney General opinion No. 12-605;</li> <li>• language from AG decision to grant QW based on the question of whether impasse had been broken by post-impasse ballot changes made by City and whether City Council needed to negotiate further (the inherent powers vs. MMBA issue);</li> <li>• the cost and time and risks of litigating QW, including appeals and the issue of whether a decision in QW case would be universally applicable;</li> <li>• the desirability of finding a solution that is collaborative;</li> <li>• financial challenges facing City and retirement funds— desire on part of employees, retirees and City to make benefits sustainable;</li> <li>• Stipulated Order that City should have engaged in further negotiation of final language before putting on ballot to comply with MMBA obligations and failure to do so was a procedural defect significant enough to declare null and void Resolution placing Measure B on ballot. This order will not include a finding that the City acted in bad faith.</li> </ul>

#### ALTERNATIVE PENSION REFORM SETTLEMENT FRAMEWORK

Evidence Code Section 1152

November 23, 2015

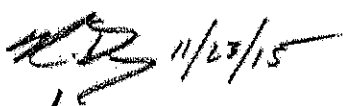

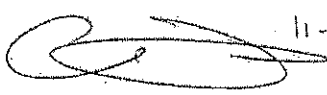
Page 18 of 20




		<ul style="list-style-type: none"> <li>Any additional language required by the court to allow the Court to approve the parties' Stipulated Order and Judgment. The Court order must be factually accurate.</li> <li>Agreement that Resolution No. 76158 shall be null and void.</li> <li>Overriding public interest in expedited resolution of quo warranto proceedings and implementation of Settlement Framework to restore and improve city services and sustainability of retirement plans.</li> </ul> <p>Stipulated Judgment shall reflect that Measure B shall be invalidated.</p>
7.	Upon completion of #5 and #6	<ul style="list-style-type: none"> <li>Submission of Stipulated Order and Stipulated Judgment to quo warranto judge, which may require coordination with the Attorney General.</li> </ul>
8.	Upon entry of judgment in quo warranto case	<ul style="list-style-type: none"> <li>Formally adopt ordinances to implement Settlement Framework and replace Measure B.</li> <li>At such time as the judgment becomes final and the Quo Warranto issues, or the voters pass a substitute measure supported by the Parties, all parties dismiss/withdraw all complaints, unfair practice charges, etc.</li> </ul>
9.	January 2016	<ul style="list-style-type: none"> <li>Begin discussions over including any other provisions in Settlement Framework in ballot measure (per Section 1 above under "Quo Warranto/Ballot Measure Implementation Plan") to be completed by July 2016.</li> </ul>
10.	Third-Party Litigation	All Federated bargaining units (except A-L-P) agree to oppose any third party litigation challenging the invalidation of Measure B through the quo warranto process either by joining the litigation or by petitioning to file an Amicus Brief.
11.	Immediately upon: (1) retirees not settling their litigation; or (2) quo warranto process not succeeding in invalidating Measure B	Craft ballot measure to implement all aspects of Settlement Framework agreed to by the Federated bargaining units for placement on the ballot in November 2016. The Parties will begin this process immediately in January 2016 if either the retirees have not settled or the quo warranto process has not been completed.

This settlement framework is an outline of the agreement reached by the parties that will need to be implemented through various means, such as ordinances. Successful implementation of this agreement will satisfy and terminate the "Retirement (Pension and Retiree Healthcare) Reopener" agreed upon by the Federated bargaining units.

The Federated Bargaining Units and the City shall in good faith work toward implementing this agreement, and neither party shall take any action to undermine or subvert the terms and benefits provided by this agreement.

 11/23/15	MB 11/23/15
	WLP 11/23/15
QEM 11/23/15	ZWT 11/23/15
CS 11/23/15	yae 11/23/15
	 11-23-15

Manoherudo for JS 11/23/15	7JC 12-3-15
MM 11/23/15	MTT 12-3-15
LC 11/23/15	SV 12/4/15
 12/4/15	

## Attachment B



December 3, 2015

Jennifer Schembri  
Director of Employee Relations  
City Manager's Office  
200 E. Santa Clara Street, 3rd Floor Wing  
San José, CA 95113-1905

### Re: San Jose Federated Tier 2 Pension Benefit

Dear Ms. Schembri:

This letter provides our analysis of the San Jose Federated Tier 2 pension benefit agreement. We understand the agreement will redefine Tier 2 pension benefits as:

- Benefit formula: 2% per year of City service, maximum 70% of final average salary
- Final average salary: final three years base pay
- Normal retirement age 62
- Reduced retirement age 55, with 5% reduction for each year retirement precedes age 62
- Provide the following ancillary benefits:
  - 5 year vesting
  - Cost of Living Adjustments equal to the lesser of CPI and the following based on years of service at retirement:

Years of City Service at Retirement	COLA
1-10	1.25%
11-20	1.50%
21-25	1.75%
26+	2.00%

Current Tier 2 employees as of agreement date will receive the lesser of a 1.5% COLA or CPI for 1-10 years of City service at retirement.

- Automatic 50% survivor benefit
- Disability benefit:
  - ☐ Service-connected – 2% x Years of Service x Final Average Salary, with a minimum of 40% and a maximum of 70% of Final Average Salary
  - ☐ Non Service-connected – 2% x Years of Service x Final Average Salary, with a minimum of 20% and a maximum of 70% of Final Average Salary

### Analysis

The following table shows the estimated impact on the Tier 2 Normal Cost:

Normal Cost	Current Tier 1	Current Tier 2	Agreement Tier 2
Total	23.41%	11.48%	14.2% New T2 / 14.3% Current T2
City	17.08%	5.74%	7.1%
Member	6.33%	5.74%	7.1%



These normal cost results used the current Cheiron Tier 2 retirement rates from the June 30, 2014 valuation. Because the Agreement Tier 2 benefit reduces the normal retirement age from 65 to 62, we believe Cheiron may adjust the Tier 2 retirement rates to reflect the lower normal retirement age. We estimate this could increase the Agreement Tier 2 total normal cost by approximately 0.4%.

The following table projects out City normal cost under the current Tier 2 benefit formula, assuming Tier 2 benefits were the same as Tier 1, and under the agreed to Tier 2 benefit formula over the next 30 years (note all projections are based on the current Cheiron Tier 2 retirement rates):

**City of San Jose  
Federated  
Projection of City Normal Cost of Agreed To Pension Tier 2 Benefit Formula  
(\$ millions)**

FYE	<u>Tier 2 Benefit Unchanged</u>		<u>Tier 2 Benefit Restored to</u>		<u>Tier 2 Benefit as Bargained</u>	
	11.48% Tier 2 NC		Tier 1 Level		14.2% Tier 2 NC	
	23.41% Tier 2 NC		(14.3% Current Tier 2)			
	<u>Total City Cost</u>		<u>Total City Cost</u>		<u>Total City Cost</u>	
	% of Pay	\$	% of Pay	\$	% of Pay	\$
2017	5.74%	4.0	17.08%	11.8	7.1%	4.9
2018	5.74%	4.8	17.08%	14.4	7.1%	6.0
2019	5.74%	5.7	17.08%	17.1	7.1%	7.1
2020	5.74%	6.7	17.08%	19.9	7.1%	8.3
2021	5.74%	7.7	17.08%	23.0	7.1%	9.6
2022	5.74%	8.8	17.08%	26.2	7.1%	10.9
2023	5.74%	9.8	17.08%	29.2	7.1%	12.2
2024	5.74%	10.7	17.08%	31.9	7.1%	13.3
2025	5.74%	11.6	17.08%	34.6	7.1%	14.4
2026	5.74%	12.5	17.08%	37.2	7.1%	15.5
2027	5.74%	13.4	17.08%	39.9	7.1%	16.7
2028	5.74%	14.4	17.08%	42.8	7.1%	17.8
2029	5.74%	15.3	17.08%	45.6	7.1%	19.0
2030	5.74%	16.4	17.08%	48.8	7.1%	20.3
2031	5.74%	17.5	17.08%	52.0	7.1%	21.7
2032	5.74%	18.6	17.08%	55.4	7.1%	23.1
2033	5.74%	19.8	17.08%	58.8	7.1%	24.5
2034	5.74%	20.8	17.08%	61.9	7.1%	25.8
2035	5.74%	21.7	17.08%	64.7	7.1%	27.0
2036	5.74%	22.7	17.08%	67.4	7.1%	28.1
2037	5.74%	23.6	17.08%	70.1	7.1%	29.2
2038	5.74%	24.5	17.08%	73.0	7.1%	30.4
2039	5.74%	25.6	17.08%	76.1	7.1%	31.7
2040	5.74%	26.6	17.08%	79.1	7.1%	33.0
2041	5.74%	27.5	17.08%	81.9	7.1%	34.1
2042	5.74%	28.5	17.08%	84.7	7.1%	35.3
2043	5.74%	29.4	17.08%	87.5	7.1%	36.5
2044	5.74%	30.3	17.08%	90.3	7.1%	37.6
2045	5.74%	31.3	17.08%	93.0	7.1%	38.8
2046	5.74%	32.2	17.08%	95.7	7.1%	39.9
Totals		542.4		1,613.7		672.9

Jennifer Schembri  
December 3, 2015  
Page 3



The agreement also provides that Tier 2 members will pay 50% of the unfunded liability contribution. Even though there is a ramp up feature to this cost sharing we believe, if unfunded liabilities do materialize this will be a cost savings feature for the City.

**Assumptions**

Study results were estimated using the same assumptions as the Cheiron June 30, 2014 actuarial valuation.

\* \* \*

To the best of our knowledge, this letter is complete and accurate and has been prepared using generally accepted actuarial principles and practices. As a member of the American Academy of Actuaries meeting the Academy Qualification Standards, I certify the actuarial results and opinions herein.

Please call Cathy Wandro (650-377-1606) or me (650-377-1601) with any questions about this letter.

Sincerely,

John E. Bartel  
President

c: Cathy Wandro, Bartel Associates

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December 3, 2015

Jennifer Schembri  
Director of Employee Relations  
City Manager's Office  
200 E. Santa Clara Street, 3rd Floor Wing  
San José, CA 95113-1905

**Re: San Jose Federated Retiree Healthcare Agreement**

Dear Ms. Schembri:

This letter provides our analysis of the San Jose Federated retiree healthcare (medical and dental) agreement. We understand the agreement will:

- Establish a VEBA
  - New hires and current Tier 2 employees (except Tier 2A represented by OE#3) will participate in the VEBA only and will not be eligible for current plan benefits.
  - Current Tier 1 and Tier 2A represented by OE#3 retiree healthcare participants would be given the option to "opt-out" of the current plan and join the VEBA. This, in conjunction with closing the plan to new hires and most current Tier 2 employees will effectively mean the current benefit will wear away over time.
    - ☐ Historical employee contributions to the current plan would be transferred for anyone opting out of the current plan.
- Contributions:
  - City will contribute the full ARC, less member contributions, to the current plan based on total pensionable pay regardless of whether an individual participates in the current plan or the VEBA. (Note the City, per the agreement, may cap its contribution at 14% of total pensionable pay.)
  - City will not contribute to the VEBA.
  - Members remaining in the current plan will contribute 7.5% of their pensionable pay.
  - Members participating in the VEBA will not contribute to the current plan.
- All retirees, whether participating in the current plan or the VEBA would be allowed to participate in the City's medical plans, however retirees participating in the VEBA would only be eligible for unsubsidized premiums.
- Adoption of the Kaiser NCAL 4307 medical plan for actives and retirees.
- Add an "in lieu" feature to the current plan that would allow retirees to receive a credit for 25% of the lowest cost medical and dental plan as a credit toward future healthcare premiums, in lieu of receiving healthcare coverage.
- Agreement is contingent on cost analysis determining that funding will be adequate for the current plan and a review of the legal/tax issues.



#### Analysis – Funding Valuation Basis

The following table shows the estimated impact of the retiree healthcare agreement on the Actuarial Liability under the Funding Valuation basis which uses a 7% discount rate and includes both the explicit and implicit subsidy (millions):

AAL	Current Valuation	With Kaiser 4307 Plan	Agreement with Opt Out	Total \$ Impact	Total % Impact
Active	\$ 260.6	\$ 229.7	\$ 189.4	\$ (71.2)	(27%)
Inactive	404.4	370.3	370.3	(34.1)	(8%)
Total	664.9	600.0	559.7	(105.2)	(16%)

The following table shows the estimated impact of the retiree healthcare agreement on the Annual Required Contribution (ARC) under the Funding Valuation basis. The current valuation's Unfunded Actuarial Liability (UAL) amortization period is 30 year, level dollar. The agreement ARC uses a UAL amortization period of 25 years, level dollar.

ARC	Based on Payroll	Current Valuation	Agreement with Opt Out	% of Total Payroll Impact
Normal Cost	Eligible Payroll	6.01%	5.02%	(2.43%)
UAL Amortization	Total Payroll	16.07%	13.81%	(2.26%)
Total ARC	Total Payroll	21.12%	16.43%	(4.69%)

The following table shows the estimated impact of the retiree healthcare agreement on the City and member contribution rates under the Funding Valuation basis. Under the agreement, members remaining in the retiree healthcare plan will contribute 7.5% of pensionable payroll. The City will contribute the remaining portion of the ARC (although the City may cap its contribution at 14% of total pensionable payroll). The member and City contributions shown are based on different payrolls, with the member contributions based on the payroll for members remaining in the retiree healthcare plan but the City contribution based on total payroll.

Contributions	Based on Payroll	Current Valuation	Agreement with Opt Out	% of Total Payroll Impact
Member	Eligible Payroll	10.47%	7.50%	(4.89%)
City	Total Payroll	12.32%	12.52%	0.20%
Total <sup>1</sup>	Total Payroll	21.12%	16.43%	(4.69%)

We are also attaching a table that projects City contributions for 30 years under the current plan and the retiree healthcare agreement.

<sup>1</sup> The agreement requires member contribution rate be applied only to pensionable pay for those remaining in the current plan while the City contribution rate would be applied to total pensionable pay. Since the member and City rates apply to different pensionable pay for both the current plan and the agreement, the total percentages were calculated based on total pensionable pay, including those ineligible or assumed to opt out.



The following table shows the impact of the agreement on FY 2015/16 dollar contributions, with City contributions equal to the ARC less the member contributions, and amounts rounded to the nearest \$100,000:

	Current	Agreement with Opt Out	Savings
Normal Cost	\$ 12,200,000	\$ 6,300,000	\$ 5,900,000
UAL Amortization	38,800,000	33,300,000	5,500,000
Total ARC	51,000,000	39,600,000	11,400,000
Member	21,200,000	9,400,000	11,800,000
Net City	29,800,000	30,200,000	(400,000)

#### Assumptions

The above calculations are based on the assumption that the following percentage of employees will opt into the VEBA:

Age	Service						
	< 5	5-9	10-14	15-19	20-24	25-29	≥ 30
< 25	100%	n/a	n/a	n/a	n/a	n/a	n/a
25-29	100%	100%	n/a	n/a	n/a	n/a	n/a
30-34	100%	90%	70%	35%	n/a	n/a	n/a
35-39	100%	85%	60%	30%	15%	n/a	n/a
40-44	100%	75%	50%	25%	0%	0%	n/a
45-49	100%	60%	25%	0%	0%	0%	0%
40-54	100%	50%	0%	0%	0%	0%	0%
55-59	100%	50%	0%	0%	0%	0%	0%
60-64	100%	50%	0%	0%	0%	0%	0%
≥ 65	100%	67%	33%	0%	0%	0%	0%

Participant data does not include member contributions before October 2012. Employees that opt out of the cash portion of the current plan would be entitled to receive their historical member contributions. We estimated the amount of member contributions for those hired before October 2012 by increasing member contributions in the participant data as follows:

- 0% for those hired on or after October 2012
- 50% for those hired from October 2002 through September 2012
- 100% for those hired from October 1992 through September 2002
- 150% for those hired before October 1992

Because members who opt out and remain in the City's medical plans at retirement will only be eligible for unsubsidized premiums, there will be no remaining retiree healthcare liability for them with the City.

Study results were estimated based on the Cheiron June 30, 2014 actuarial valuation for funding purposes and include both the implicit and explicit subsidy for those remaining in the plan.

\* \* \*



Jennifer Schembri  
December 3, 2015  
Page 4



To the best of our knowledge, this letter is complete and accurate and has been prepared using generally accepted actuarial principles and practices. As a member of the American Academy of Actuaries meeting the Academy Qualification Standards, I certify the actuarial results and opinions herein.

Please call Cathy Wandro (650-377-1606) or me (650-377-1601) with any questions about this letter.

Sincerely,

John E. Bartel  
President

c: Cathy Wandro, Bartel Associates

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**San Jose Federated Retiree Healthcare Plan**  
**Projection of City Contributions**  
**Based on the 6/30/14 Funding Valuation**  
**(\$ millions)**

	Current Plan		Retiree Healthcare Agreement	
Member %	50% Medical/27% Dental		7.5% of Remaining Payroll	
City %	50% Medical/73% Dental		ARC less Member %	
UAL Amort.	Varies by UAL Base		25-year closed amortization period	
FYE	% of Pay	\$	% of Pay	\$
2017	12.37%	30.7	12.22%	30.3
2018	12.28%	31.3	11.94%	30.5
2019	12.14%	31.9	11.66%	30.6
2020	12.00%	32.4	11.39%	30.8
2021	11.82%	32.8	11.14%	30.9
2022	11.71%	33.5	10.89%	31.1
2023	11.58%	34.0	10.65%	31.3
2024	11.41%	34.5	10.39%	31.4
2025	11.22%	34.9	10.14%	31.5
2026	11.02%	35.2	9.90%	31.6
2027	10.82%	35.6	9.66%	31.7
2028	10.62%	35.9	9.42%	31.9
2029	10.41%	36.2	9.20%	32.0
2030	10.20%	36.5	8.98%	32.1
2031	10.00%	36.8	8.77%	32.3
2032	7.39%	28.0	8.57%	32.4
2033	7.95%	30.9	8.37%	32.6
2034	12.76%	51.1	8.17%	32.7
2035	15.06%	62.0	7.96%	32.8
2036	15.42%	65.3	7.76%	32.9
2037	15.05%	65.6	7.56%	32.9
2038	14.70%	65.8	7.37%	33.0
2039	14.35%	66.1	7.18%	33.1
2040	14.00%	66.3	7.00%	33.2
2041	0.12%	0.6	0.00%	-
2042	0.09%	0.5	0.00%	-
2043	0.08%	0.4	0.00%	-
2044	0.06%	0.3	0.00%	-
2045	0.05%	0.3	0.00%	-
2046	0.04%	0.2	0.00%	-
Totals		1,015.6		765.7

12/3/2015 (B4)



December 3, 2015

Jennifer Schembri  
Director of Employee Relations  
City Manager's Office  
200 E. Santa Clara Street, 3rd Floor Wing  
San José, CA 95113-1905

**Re: San Jose Federated Guaranteed Purchasing Power (GPP)**

Dear Ms. Schembri:

This letter provides our analysis of the Federated Guaranteed Purchasing Power (GPP) agreement. We understand the agreement provides for a GPP benefit in exchange for agreement to eliminate the Supplemental Retirement Benefit Reserve (SRBR). Elimination of the SRBR has already resulted in significant savings. The GPP benefit will provide current and future Tier 1 retirees a guaranteed 75% of purchasing power benefit after retirement. This benefit will be calculated by comparing the ratio of actual pension benefits to what pension benefits would have been had retirees received 100% of Bay Area CPI increases. If that ratio is less than 75% then retirees would receive an additional check equal to the difference.

#### **Analysis**

We believe the cost of this benefit will only be significant if inflation returns to high levels. Inflation has generally been less than 3% (Tier 1 Cost of Living Adjustments) over the last 20 years so only retirees who retired several years ago (prior to 1981) would have ratios less than 75%. As of May 2015 there were approximately 68 retirees with an average age of 88.

We estimate the liability for this group of earlier retirees would not be more than \$750 thousand and because this is an increase for current retirees we think it is possible (if not likely) Cheiron will recommend a shorter (5 year) amortization period. If so then the first year payment will not be more than \$180 thousand. However, if they do not recommend a shorter amortization then using 20 years the first year payment will not be more than \$60,000. Both of these amortization payments would increase with the aggregate payroll assumption of 2.85%.

Our analysis did not include a volatility assumption for inflation. While we believe Cheiron will price the GPP for other (current and future) retirees using some volatility assumptions for inflation, we also would generally expect any additional cost to be fairly modest.

#### **Assumptions**

Study results were estimated using the same assumptions as the Cheiron June 30, 2014 actuarial valuation. Our analysis also assumes Cheiron will price this using stochastic simulations based on a median inflation assumption of 3% or less.

\* \* \*

Jennifer Schembri  
December 3, 2015  
Page 2



To the best of our knowledge, this letter is complete and accurate and has been prepared using generally accepted actuarial principles and practices. As a member of the American Academy of Actuaries meeting the Academy Qualification Standards, I certify the actuarial results and opinions herein.

Please call Cathy Wandro (650-377-1606) or me (650-377-1601) with any questions about this letter.

Sincerely,

John E. Bartel  
President

c: Cathy Wandro, Bartel Associate

o:\clients\city of san jose\projects\council 2015\ba sanjoseci 15-12-03 letter federated gpp.docx



# **CITY COUNCIL AGENDA**

**DECEMBER 15, 2015**

## **SYNOPSIS**

CHAPPIE JONES  
ASH KALRA  
RAUL PERALEZ  
MANH NGUYEN  
MAGDALENA CARRASCO

DISTRICT 1  
DISTRICT 2  
DISTRICT 3  
DISTRICT 4  
DISTRICT 5

SAM LICCARDO MAYOR

PIERLUIGI OLIVERIO  
TAM NGUYEN  
ROSE HERRERA VICE MAYOR  
DONALD ROCHA  
JOHNNY KHAMIS

DISTRICT 6  
DISTRICT 7  
DISTRICT 8  
DISTRICT 9  
DISTRICT 10

*The City of San José is committed to open and honest government and strives to consistently meet the community's expectations by providing excellent service, in a positive and timely manner, and in the full view of the public.*

Welcome to the San José City Council meeting!

This Agenda contains both a Consent Calendar section for routine business items that require Council approval, and general business items arranged to correspond with San José's City Service Areas (CSAs). City Service Areas represent the policy-making level for strategic planning, policy setting, and investment decisions in the critical functions the City provides to the community. They are:

- **Strategic Support Services** — The internal functions that enable the CSAs to provide direct services to the community in an effective and efficient manner.
- **Community & Economic Development** — Manage the growth and change of the community in order to create and preserve healthy neighborhoods and ensure a diverse range of employment and housing opportunities.
- **Neighborhood Services** — Serve, foster, and strengthen community by providing access to lifelong learning and opportunities to enjoy life.
- **Transportation & Aviation Services** — A safe and efficient transportation system that contributes to the livability and economic health of the City; and provide for the air transportation needs of the community and the region at levels that is acceptable to the community.
- **Environment and Utility Services** — Manage environmental services and utility systems to ensure a sustainable environment for the community.
- **Public Safety Services** — Commitment to excellence in public safety by investing in neighborhood partnerships as well as prevention, enforcement, and emergency preparedness services.

You may speak to the City Council about any discussion item that is on the agenda, and you may also speak during Open Forum on items that are not on the agenda and are within the subject matter jurisdiction of the City Council or Successor Agency to the Redevelopment Agency Board. If you wish to speak to the City Council, please refer to the following guidelines:

- **Fill out a Yellow Speaker's Card and submit it to the City Clerk seated at the front table. Do this before the meeting or before the item is heard.** This will ensure that your name is called for the item(s) that you wish to address, and it will help ensure the meeting runs smoothly for all participants.
- When the Council reaches your item on the agenda, the Mayor will open the public hearing and call your name. Please address the Council from the podium, which is located to the left of the City Clerk's table.
- Each speaker generally has two minutes to speak per item. The amount of time allotted to speakers may vary at the Mayor's discretion, depending on the number of speakers or the length of the agenda.
- To assist you in tracking your speaking time, there is a display on the podium. The green light turns on when you begin speaking; the yellow light turns on when you have 30 seconds left; and the red light turns on when your speaking time is up.

Please be advised that, by law, the City Council is unable to discuss or take action on issues presented during Open Forum. According to State Law (the Brown Act) items must first be noticed on the agenda before any discussion or action.

The San José City Council meets every Tuesday at 1:30 p.m. and Tuesday at 7 p.m. as needed, unless otherwise noted. If you have any questions, please direct them to the City Clerk's staff seated at the tables just below the dais. Thank you for taking the time to attend today's meeting. We look forward to seeing you at future meetings.

Agendas, Staff Reports and some associated documents for City Council items may be viewed on the Internet at <http://www.sanjoseca.gov/index.aspx?NID=3549>. Council Meetings are televised live and rebroadcast on Channel 26.

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the Office of the City Clerk at San José City Hall, 200 E. Santa Clara Street, Tower 14<sup>th</sup> Floor, San José, CA 95113 at the same time that the public records are distributed or made available to the legislative body. Any draft contracts, ordinances and resolutions posted on the Internet site or distributed in advance of the Council meeting may not be the final documents approved by the City Council. Contact the Office of the City Clerk at (408) 535-1260 or [CityClerk@sanjoseca.gov](mailto:CityClerk@sanjoseca.gov) for the final document.

To request an accommodation or alternative format under the Americans with Disabilities Act for City-sponsored meetings, events or printed materials, please call (408) 535-1260 or (408) 294-9337 as soon as possible, but at least three business days before the meeting.

On occasion the City Council may consider agenda items out of order.

- **Call to Order and Roll Call**

9:03 a.m. - Closed Session, Call to Order in Council Chambers  
Absent Council Members: All Present.

11:39 a.m.- Regular Morning Session, Council Chambers, City Hall  
Absent Council Members: All Present.

1:36 p.m. - Regular Afternoon Session, Council Chambers, City Hall  
Absent Council Members: All Present.

- **Invocation (Mayor)**

Pastor David Cannistraci, Gateway City Church offered a prayer for the Invocation.

- **Pledge of Allegiance**

Mayor Sam Liccardo led the Pledge of Allegiance.

- **Orders of the Day**

The Orders of the Day and the Amended Agenda were approved with General Plan Items 10.2 and 10.3 heard before the Consent Calendar; Item 2.23 deferred to January 12, 2016; Items 3.5 and 3.10 deferred to January 2016; Item 3.11 heard no earlier than 2:30 and Item 4.4 heard no earlier than 4:00 p.m.



- Closed Session Report  
No Report.

## **1. CEREMONIAL ITEMS**

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There were none presented.

## **2. CONSENT CALENDAR**

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- 2.1 Approval of Minutes.**  
There were none.

- 2.2 Final Adoption of Ordinances.**

**Recommendation:** Final adoption of ordinances.

- (a) ORD. NO. 29664 – An ordinance of the City of San José amending chapter 6.88 of Title 6 of the San José Municipal Code as follows: to add Section 6.88.295 to add the definition of transport; to add Section 6.88.425 to require identification badges to be worn; to add Section 6.88.445 to expressly prohibit deliveries of medical marijuana; to add Section 6.88.465 to allow a registered collective to transfer medical marijuana to other collectives who are registered with the City; to amend Sections 6.88.212, 6.88.235, 6.88.242, 6.88.310, 6.88.330, 6.88.380, 6.88.420, 6.88.430, 6.88.435, 6.88.440, 6.88.460 and 6.88.900 to allow registered collectives to manufacture medical marijuana products at their off-site cultivation location, clarify disqualification from the registration process, revise the requirements for cultivation, decrease the time required for storing video from surveillance cameras from 90 to 30 days, impose new restrictions on cultivation for personal use, and to make other technical, nonsubstantive, or typographical changes. CEQA: Addendum to a Negative Declaration, File No. PP11-076.

**Ordinance No. 29664 adopted.**

- (b) ORD. NO. 29662 – An ordinance of the City of San José amending Chapter 6.44 of the San José Municipal Code to add a purpose section, add additional and clarifying definitions, require all massage therapists to be certified by the California Massage Therapy Council, require massage businesses to provide the Police Chief with copies of massage therapist certificates, require mandatory reporting to the Police Chief, specify operational requirements and to make other technical and required revisions to be consistent with State law. CEQA: Not a Project, File No. PP10-068(c), Municipal Code or Policy change that involves no changes in the physical environment.

**Ordinance No. 29662 adopted.**

## 2. CONSENT CALENDAR

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### 2.2 Final Adoption of Ordinances. (Cont'd.)

- (c) ORD. NO. 29668 – An ordinance of the City of San José rezoning the real property located on the west side of South De Anza Boulevard, approximately 120 feet west of the intersection of South De Anza Boulevard and Rainbow Drive from the A(PD) Planned Development Zoning District to the Commercial Pedestrian (CP) Zoning District on a 0.13 gross acre site (Vigagold Inc., Owner).  
**Ordinance No. 29668 adopted.**
- (d) ORD. NO. 29669 – An ordinance of the City of San José rezoning four properties located on the northwest corner of West San Carlos and Delmas Avenue (267 and 279 Delmas Avenue and 405 West San Carlos Street) from LI Light Industrial to the DC Downtown Primary Commercial Zoning District on an approximately 0.47 gross acre site (San Carlos Parts LLC, Owner). CEQA: Envision San José 2040 General Plan Final Program EIR (Resolution No. 76041), and addenda thereto, including Addendum File No. C15-042.  
**Ordinance No. 29669 adopted.**
- (e) ORD. NO. 29670 – An ordinance of the City of San José rezoning the real property located at 1785 Oakland Road from the A(PD) Planned Development Zoning District to the IP(PD) Planned Development Zoning District to allow uses of the IP Industrial Park Zoning District and miniwarehouse/ministorage uses on an approximately 1.25 gross acre site (Union Carbide Industrial Gases Inc., Owner).  
**Ordinance No. 29670 adopted.**
- (f) ORD. NO. 29667 – An ordinance of the City of San José rezoning the real property located at the southwest corner of Senter Road and East Capitol Expressway at 3167 Senter Road from the CP Commercial Pedestrian Zoning District to the PQP Public/Quasi-Public Zoning District for consideration of education land uses on a 1.58 gross acre site (Arnold Perez, Owner).  
**Ordinance No. 29667 adopted.**
- (g) ORD. NO. 29665 – An ordinance of the City of San José to rezone from IP Industrial Park to LI Light Industrial Zoning District on a 4.48 gross acre site, located on the north of Silver Creek Valley Road, approximately 210 feet north of Hellyer Avenue at 5880 Hellyer Avenue (AgKey, LLC, Owner). CEQA: Edenvale East General Plan Amendment and Rezoning Project Negative Declaration.  
**Ordinance No. 29665 adopted.**
- (h) ORD. NO. 29666 – An ordinance of the City of San José rezoning the real property located at the northwest corner of North 10<sup>th</sup> Street and East Taylor Street from A(PD) Planned Development Zoning District to CIC(PD) Planned Development Zoning District to allow up to 403 residential units and up to 5,000 square foot of retail space, the uses of the CIC Combined Industrial Commercial Zoning District (with mini storage per applicant). (Libitzky Holdings, LP, Owner). Cannery Park/Hanover Project Mitigated Negative Declaration.  
**Ordinance No. 29666 adopted.**

## **2. CONSENT CALENDAR**

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### **2.3 Approval of Council Committee Reports.**

**Recommendation:** Approval of Council Committee Minutes.

- (a) Rules and Open Government Committee Minutes of November 18, 2015. (Mayor)  
CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities.  
**Approved.**

### **2.4 Mayor and Council Excused Absence Requests.** **There were none.**

### **2.5 City Council Travel Reports.** **There were none.**

### **2.6 Report from the Council Liaison to the Retirement Boards.** **There were none.**

### **2.7 Actions Related to the Lease Agreement with Transportation Security Administration at the Airport.**

**Recommendation:** Adopt a resolution:

- (a) Authorizing the City Manager to negotiate and execute an On-Airport Lease ("Lease") with the U.S. General Services Administration ("GSA") for exclusive space leased by the Transportation Security Administration at the Airport from January 1, 2016 through December 31, 2019, with the option for GSA to extend the term for an additional three years through December 31, 2022 on the same terms and conditions, and with revenue to the City of approximately \$ 1,210,000 annually; and
- (b) Authorizing the City Manager to negotiate and execute amendments to the Lease necessary to implement annual lease rate adjustments and changes in leased space at any time during the term of the Lease.

CEQA: Not a Project, File No. PP10-066(f), Lease of equipment or existing space for the same use. (Airport)

**Resolution No. 77619 adopted.**

### **2.8 Boards and Commissions Appointments.**

**Recommendation:** Approve the following Board and Commission appointments:

- (a) Airport Commission:  
(1) District 1 Seat: Appoint Richard Terrill to a term expiring 6/30/17;
- (b) Historic Landmarks Commission:  
(1) Member Seat: Appoint Eric Hirst to a term expiring 6/30/18;
- (c) Human Services Commission:  
(1) District 5 Seat: Appoint Peter Ortiz to a term expiring 12/31/16;

## **2. CONSENT CALENDAR**

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### **2.8 Boards and Commissions Appointments. (Cont'd.)**

- (d) Library and Early Education Commission:
    - (1) District 8 Seat: Appoint Matthew Giordono to a term expiring 6/30/17;
  - (e) Neighborhoods Commission:
    - (1) District 4 Seat: Appoint Mark Espinoza to a term expiring 6/30/16;
  - (f) Senior Citizens Commission:
    - (1) Citywide Seat: Appoint May Miller to a term expiring 6/30/17.
- CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (City Clerk)  
**Approved.**

### **2.9 City Manager's Travel to Phoenix, Arizona.**

**Recommendation:** Authorize travel for City Manager, Norberto Dueñas to travel to Phoenix, Arizona on January 14 – 16, 2016 to participate in the Large Cities Executive Forum. City Manager's Non Personal Services Appropriation. CEQA: Not a Project, File No. PP10-069, City Administrative Activities. (City Manager)  
**Approved.**

### **2.10 Fall Public Safety Fair/Forum.**

**Recommendation:** As recommended by the Rules and Open Government Committee on December 2, 2015:

- (a) Retroactively approve Vice Mayor Rose Herrera's Fall Public Safety Fair/Forum held on Monday, November 23, 2015 as a City Council sponsored Event and approve the expenditure of funds.
- (b) Approve and accept donations from various individuals, businesses or community groups to support the event.

CEQA: Not a Project, File No. PP15-077, Temporary Special Events. (Herrera)  
[Rules Committee referral 12/2/15 – Item G(1)(a)]  
**Approved.**

### **2.11 City Council Committee and Board and Commission Appointments.**

**Recommendation:** As recommended by the Rules and Open Government Committee on December 2, 2015, appoint Council Member Manh Nguyen to represent the City of San José on the Santa Clara Valley Transportation Authority (VTA). CEQA: Not a Project, File No. PP10-069, City Administrative Activities. (Mayor)  
[Rules Committee referral 12/2/15 – Item F(1)(a)]  
**Approved.**

## **2. CONSENT CALENDAR**

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### **2.12 Agreement with Moore, Iacofano Goltsman, Inc. for Various Capital Improvement Projects.**

**Recommendation:** Approve the First Amendment to the Agreement for Consultant Services with Moore, Iacofano Goltsman, Inc. to increase the total contract amount from \$250,000 to \$750,000, which will allow continued comprehensive planning support for various Parks, Recreation and Neighborhood Services Department Capital Improvement Projects including, but not limited to, community centers, parks, trails, and other recreational facilities. CEQA: Not a Project, File No. PP10-066(d), Consultant Services that involve no physical changes to the environment. (Parks, Recreation and Neighborhood Services)

**Approved.**

### **2.13 2014-2015 Park Trust Fund Annual Report.**

**Recommendation:** Accept the Park Trust Fund annual report for fiscal year 2014-2015. CEQA: Not a project, File No. PP10-069(a), Annual Reports and Assessments that involve no approvals of any city actions. (Parks, Recreation and Neighborhood Services)

**Accepted.**

### **2.14 Actions Related to the 2016-2017 Hazardous Vegetation Commencement Report from the Office of Santa Clara Environmental Resource Agency.**

**Recommendation:** Adopt a resolution:

- (a) Accepting the 2016-2017 Hazardous Vegetation Commencement Report compiled by the Office of Santa Clara Environmental Resource Agency, Department of Agriculture and Resource Management, Division of Hazardous Vegetation;
- (b) Declaring that those certain noxious or dangerous seasonal and recurrent weeds, growing or likely to be growing, and refuse, situated or likely to be situated, on those properties identified in the Report are a public nuisance; and
- (c) Directing the Office of Santa Clara Environmental Resource Agency, Department of Agriculture and Resource Management, Division of Hazardous Vegetation to mail notices of a Public Hearing on January 26, 2016 at 1:30 p.m. before the City Council on the Report to property owners of affected real properties pursuant to Chapter 9.12 of Title 9 of the San José Municipal Code and the Weed Abatement Agreement between the City of San José and the County of Santa Clara.

CEQA: Exempt, Guidelines Section 15301. Existing Facilities, File No. PP13-097. (Planning, Building and Code Enforcement)

**Resolution No. 77620 adopted.**

## **2. CONSENT CALENDAR**

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### **2.15 Amendment to Title 15 Public Utilities for Water Efficient Landscape Standards.**

**Recommendation:** Approve an ordinance amending Chapter 15.11 (Water Efficient Landscape Standards for New and Rehabilitated Landscaping) of Title 15 (Public Utilities) of the San José Municipal Code to add and amend definitions, modify landscape installation requirements, and expand the types of projects subject to landscape installation requirements, consistent with State regulations governing local landscape water efficiency ordinances. CEQA: Envision San José 2040 General Plan EIR, Resolution No. 76041, and Addenda thereto. (Planning, Building and Code Enforcement)  
**Ordinance No. 29671 passed for publication.**

### **2.16 Actions Related to the Bay Area Urban Areas Security Initiative Grant.**

**Recommendation:**

- (a) Adopt a resolution authorizing the City Manager to execute an Agreement between the City of San José and the City and County of San Francisco, acting as fiscal agent for the Bay Area Urban Areas Security Initiative (UASI), to accept the 2015 UASI grant allocation in the amount of \$1,000,000, and to negotiate and execute additional amendments and related documents without further City Council action.

**Resolution No. 77621 adopted.**

- (b) Adopt the following 2015-2016 Appropriation Ordinance and Funding Sources Resolution Amendments in the General Fund:
  - (1) Establish a City-Wide Expenses appropriation to the Police Department for the Urban Areas Security Initiative Grant - Police 2015 in the amount of \$580,000.
  - (2) Establish a City-Wide Expenses appropriation to the Fire Department for the Urban Areas Security Initiative Grant - Fire 2015 in the amount of \$155,000.
  - (3) Increase the estimate for Revenue from the Federal Government by \$735,000.

CEQA: Not a Project, File No. PP10-066 Agreements and Contracts with no changes in the physical environment and File No. PP10-0067(b) appropriation ordinance that involve no approvals of city actions that involve impacts to the physical environment.  
(Police/Fire/City Manager)

**Ordinance No. 29672 adopted.**

**Resolution No. 77622 adopted.**

## **2. CONSENT CALENDAR**

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### **2.17 Amendment to the Agreement with North San Pedro Townhomes, LLC and San Pedro Life I, LLC for Construction of a Sanitary Sewer Main.**

**Recommendation:**

- (a) Approve an Amendment to the existing City-Private Developer Agreement with North San Pedro Townhomes, LLC and San Pedro Life I, LLC to allow the City to reimburse the Developer in an amount not to exceed \$1,427,692 for the realignment of the existing sanitary sewer located on Terraine Street between W. St. James Street and Devine Street.

**Approved.**

- (b) Adopt a resolution authorizing the City Manager, on behalf of the City, to execute documents as necessary to finalize an exchange of properties between the City and Charles W. Davidson, Anita A. Davidson and Gloria Chiang, Trustees of the Davidson Living Trust dated December 6, 1989, pursuant to a Temporary Construction Easement and Exchange Agreement to be executed between the Successor Agency and the Davidson Trust in connection with the Julian Street Realignment Project.

CEQA: File No. PP13-076, Remove and replace in-kind underground utility pipes. Council District 3. (Public Works)

**Resolution No. 77623 adopted.**

### **2.18 Vacation of a Public Easement Located on 1914 McBain Avenue.**

**Recommendation:**

- (a) Adopt a resolution:
  - (1) Approving the report of the Director of Public Works setting forth the facts justifying the summary vacation of the public easement;
  - (2) Vacating a portion of the public easement on 1914 McBain Avenue that has been superseded by relocation upon the satisfaction of the conditions set forth in the resolution; and
  - (3) Directing the City Clerk, upon the satisfaction of the conditions set forth in the resolution, to record a certified copy of the resolution of vacation with the Office of the Recorder, County of Santa Clara.

**Resolution No. 77624 adopted.**

- (b) Adopt a resolution authorizing the City Manager to negotiate and execute a quitclaim deed for the portion of public easement to be summarily vacated, which will be provided to the property owners of 1914 McBain Avenue, Eric L. and Christen M. Fisher, upon the satisfaction of conditions set forth in the resolution of vacation.

CEQA: Exempt, Guidelines Section 15305. Minor Alterations to Land, Department of Public Works File No. 3-18966. Council District 1. (Public Works)

**Resolution No. 77625 adopted.**

## **2. CONSENT CALENDAR**

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### **2.19 Actions Related to the Construction Contract for the 6736 – Large Trash Capture Device Installation – Phase III Project.**

#### **Recommendation:**

- (a) Approve award of a construction contract for the 6736 – Large Trash Capture Device Installation - Phase III Project to the low bidder, JMB Construction, Inc. in the amount of \$5,421,787 and a ten percent contingency in the amount of \$542,179.

**Approved.**

- (b) Adopt the following 2015-2016 Appropriation Ordinance amendments in the Storm Sewer Capital Fund:

- (1) Decrease the Unrestricted Ending Fund Balance in the amount of \$2,000,000.
- (2) Increase the appropriation to the Public Works Department for Large Trash Capture Devices in the amount of \$2,000,000.

CEQA: Public Project for the Citywide Large Trash Capture Device Installation, File No. PP15-081 dated September 1, 2015 is an Addendum to a Mitigated Negative Declaration for a previous project File No. PP08-257 adopted on 1/22/2009. Council Districts 2 and 7. (Public Works/City Manager)

**Ordinance No. 29673 adopted.**

### **2.20 Actions Related to the Design-Build for the 60-Inch Brick Interceptor Phase VI-A Project.**

#### **Recommendation:**

- (a) Adopt a resolution adopting the Mitigated Negative Declaration prepared for the Project and a related mitigation monitoring and reporting program, in accordance with the California Environmental Quality Act.

**Resolution No. 77626 adopted.**

- (b) Adopt a resolution by the City Council doing the following in accordance with San José Municipal Code Section 14.07.310:

- (1) Finding that the cost of the proposed design-build contract for the 60-inch Brick Interceptor Phase VI-A Project ("Project") will exceed \$5,000,000, and the use of the design-build delivery method process is likely to save money and/or result in faster Project completion than if the City used the traditional design-bid-build method of project delivery.
- (2) Approving the issuance of a Request for Proposals and the evaluation criteria and process by which the City shall select a design-build entity for the Project.
- (3) Authorizing the Director of Public Works to issue addenda to the Request for Proposals to add any additional requirements or to make such other revisions to the Request for Proposals that are consistent with the scope and selection criteria as approved by Council.

**Resolution No. 77627 adopted.**



## **2. CONSENT CALENDAR**

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### **2.20 Actions Related to the Design-Build for the 60-Inch Brick Interceptor Phase VI-A Project. (Cont'd.)**

- (c) Approve the Third Amendment to the Consultant Agreement with AECOM Technical Services by extending the term of the Agreement from December 31, 2015 to December 31, 2018, to enable AECOM to continue providing technical services to support delivery of the Project with no additional compensation.

CEQA: Sewer Interceptor Phase VI-A Initial Study and Mitigated Negative Declaration, File No. PP10-160. Council Districts 3 and 4. (Public Works)

**Approved.**

### **2.21 Amendment to the Agreement with Siemens Industry, Inc. for System Software.**

**Recommendation:** Approve a Second Amendment to the Agreement with Siemens Industry, Inc. for TiMC system software design and implementation, to extend the term of the agreement from January 1, 2016 to June 30, 2018, amend the fee schedule to reflect current labor rates, and increase the total compensation from \$1,042,917 to \$1,092,734.

CEQA: Not a Project, File No. PP10-066(a), Agreements and contracts for services that involve no physical changes to the environment. (Transportation)

**Approved.**

### **2.22 Downtown San José Property-Based Business Improvement District Annual Financial Report.**

**Recommendation:** Approve the Downtown San José Property-Based Business Improvement District Annual Financial Report for FY 2014-15. CEQA: Not a Project, File No. PP10-069(a), Annual Reports that involves no approval of City actions. Council District 3. (Transportation)

**Approved.**

### **2.23 Amendment to the Lease of Airport Premises with Sky Chefs Inc.**

**Recommendation:**

- (a) Approve a Second Amendment to the Lease of Airport Premises between the City of San José and Sky Chefs, Inc. ("Sky Chefs") to:
  - (1) Extend the term of the Lease for one year with two renewal options of one year each.
  - (2) Increase the Minimum Annual Guarantee (MAG) floor to be paid by Sky Chefs from \$500,000 to \$550,000 annually with an annual MAG adjustment made based on gross sales. In no event will the MAG be reduced below \$550,000 per year.

## **2. CONSENT CALENDAR**

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### **2.23 Amendment to the Lease of Airport Premises with Sky Chefs Inc. (Cont'd.)**

- (b) Adopt a resolution authorizing the City Manager to negotiate and execute up to two one-year amendments to extend the term of the Lease through February 14, 2019 on the same terms and conditions.

CEQA: Not a Project, File No. PP10-066(f), Lease of equipment or existing space for the same use and will involve no physical changes to the environment. (Airport)

(Deferred from 12/8/15 – Item 2.7)

**Deferred to January 12, 2016 per Orders of the Day.**

### **2.24 Master Planned Development Permit for Property Located on the Northwest Corner of North 10<sup>th</sup> Street and East Taylor Street.**

**Recommendation:** Consideration of adoption of a resolution approving a Master Planned Development Permit to allow construction of up to 403 residential units and up to 5,000 square feet of retail space, the uses of the CIC Combined Industrial Commercial Zoning District, the demolition of three existing industrial buildings, and the removal of seven ordinance sized trees on an 11.43 gross acre site located on the northwest corner of North 10<sup>th</sup> Street and East Taylor Street. CEQA: Cannery Park/Hanover Project Mitigated Negative Declaration, File No. GP15-001. Council District 3. (Planning, Building and Code Enforcement)

[Referred from 12/8/15 – Item 11.11(b)]

**Resolution No. 77628 adopted.**

## **3. STRATEGIC SUPPORT SERVICES**

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### **3.1 Report of the City Manager, Norberto Dueñas (Verbal Report). No Report.**

### **3.2 Labor Negotiations Update.**

**Recommendation:** Accept Labor Negotiations Update.

**Heard at 9:03 a.m.**

**No Report.**

### **3.3 Annual Report on City Services 2014-15.**

**Recommendation:** Accept the Annual Report on City Services FY 2014-15. CEQA: Not a Project, File No. PP10-069(a), Annual reports that involve no approvals of City actions. (Auditor)

**Deferred to January 12, 2016 per Rules and Open Government Committee.**

### 3. STRATEGIC SUPPORT SERVICES

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#### 3.4 Appeals Hearing Board Interviews.

**Recommendation:** Interview applicants and consider appointments to fill Two (2) Members-at-Large with terms ending December 31, 2019 on the Appeals Hearing Board. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (City Clerk)  
**Deferred to January 12, 2016 per Rules and Open Government Committee.**

#### 3.5 Civil Service Commission Interviews.

**Recommendation:** Interview applicants and consider appointments to fill two (2) Members-at-Large with terms ending November 30, 2019 on the Civil Service Commission. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (City Clerk)  
**Deferred to January 2016 per Orders of the Day.**

#### 3.6 Council Priority Setting Session.

*Heard First at 1:30 p.m.*

**Recommendation:**

(a) Approve new items for the Council Priority list.

(b) Rank items on Council Priority list.

CEQA: Not a Project, File No. PP10-069, City Organizational and Administrative Activities that involve no approvals of any city action. (City Manager)

	<u>POLICY NAME</u>	<u>TOTAL VOTES*</u>
(1)	Housing Rehabilitation Program/Homeless Veterans Voucher	20
(2)	Downtown Active Storefronts Initiative	12
(3)	San José Urban Agriculture Incentive	10
(4)	Gender Pay Equity	7
(5)	Disadvantaged Business Enterprises	5
(6)	Electronic Billboards	4
(7)	Graywater Systems	2
(8)	Surplus Land Sale	2
(9)	Downtown and/or Citywide Parks Operations/Maintenance Financing Dist.	1
(10)	North San José Policy Review	1
(11)	Peddler Permits Enforcement/Outdoor Mobile Vendor Policy	1
(12)	San José is Open for Business/Legal Nonconforming Uses	1
(13)	Development Agreement Policy	0
(14)	Food and Clothing Distribution at City Parks	0
(15)	Off-Sale of Alcohol at Grocery Stores Streamlining	0
(16)	Real Estate Transactions Streamlining (Phase 3)	0
(17)	Zoning Ordinance Quarterly Modifications	0

\* *Individual votes by the Mayor and Council Members are available on the City Clerk Website link: [http://sanjose.granicus.com/GeneratedAgendaViewer.php?event\\_id=032c1a8c-300a-4a75-9181-819a83083bd8](http://sanjose.granicus.com/GeneratedAgendaViewer.php?event_id=032c1a8c-300a-4a75-9181-819a83083bd8)*

### **3. STRATEGIC SUPPORT SERVICES**

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#### **3.7 Actions Related to the Terms of the Alternative Pension Reform Settlement Framework Agreement Concerning the Litigation Arising Out of Measure B with Bargaining Units Representing Employees in the Federated City Employees' Retirement System and Modifications for Employees in Unit 99 and Units 81/82.**

##### **Recommendation:**

- (a) Adopt a resolution to:
  - (1) Approve the terms of the Federated Alternative Pension Reform Settlement Framework agreement ("Framework") between the City and bargaining units representing employees in the Federated City Employees' Retirement System ("Federated Bargaining Units"):
    - (i) Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43)
    - (ii) Association of Legal Professional (ALP)
    - (iii) Association of Maintenance Supervisory Personnel, IFPTE Local 21 (AMSP)
    - (iv) City Association of Management Personnel, IFPTE Local 21 (CAMP)
    - (v) Confidential Employees' Organization, AFSCME Local 101 (CEO)
    - (vi) International Brotherhood of Electrical Workers, Local No. 332 (IBEW)
    - (vii) Municipal Employees' Federation AFSCME Local 101 (MEF)
    - (viii) International Union of Operating Engineers, Local No. 3 (OE#3)
  - (2) Authorize the City Manager to negotiate and execute a Retirement Memorandum of Agreement between the City and Federated Bargaining Units listed above; and
  - (3) Approve the modifications for unrepresented employees in Unit 99 and Units 81/82 similar to those in the Federated Alternative Pension Reform Settlement Framework except for those provisions specified herein.

##### **Resolution No. 77629 adopted.**

**Noes: Oliverio.**

- (b) Adopt the following 2015-2016 Appropriation Ordinance amendments in the General Fund:
  - (1) Increase the City-wide Measure B Settlement appropriation to the City Manager's Office in the amount of \$1,257,000.
  - (2) Decrease the Retiree Healthcare Solutions Reserve in the amount of \$1,257,000.

CEQA: Not a Project, File No. PP10-069(b), Personnel Related Decisions. (City Manager)

##### **Ordinance No. 29674 adopted.**

**Noes: Oliverio.**

### **3. STRATEGIC SUPPORT SERVICES**

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#### **3.8 TEFRA Hearing for the Issuance of Tax-Exempt Revenue Bonds by the California Municipal Finance Authority for the Harker School Project.**

**Recommendation:**

- (a) Hold a Tax Equity and Fiscal Responsibility Act ("TEFRA") Hearing for the issuance of \$20,000,000 of tax-exempt 501(c)(3) revenue bonds by the California Municipal Finance Authority ("CMFA").
- (b) Consider adoption of a resolution approving the issuance of tax-exempt revenue bonds, by the CMFA in an aggregate principal amount not to exceed \$20,000,000 to finance: (1) the acquisition, construction and/or equipping of certain educational facilities to be owned and operated by the Borrower and to be located in the City at 500 Saratoga Avenue, San José, California and (2) certain expenses incurred in connection with the issuance of the Bonds (collectively, the "Project").

CEQA: Exempt, Guidelines Section 15061(b)(3), No potential for causing a significant effect on the environment. Council District 1. (Finance)

**The TEFRA Hearing was held at 1:30 p.m.**

**Resolution No. 77630 adopted.**

#### **3.9 Mayor's 2015 Biennial Ethics Review and Recommendations.**

**Recommendation:** As recommended by the Rules and Open Government Committee on December 2, 2015:

- (a) Direct the City Clerk to report on the feasibility of creating an electronic filing system for lobbyist tracking and reporting, which would automate the process in a way that provides immediate online disclosure upon submittal of reports.
- (b) Direct the City Clerk to refine current lobbyist forms and add a section that differentiates the type of contact with elected officials and their Chiefs of Staff (i.e.: email, phone call, meeting, etc.).
- (c) Direct the City Attorney to draft amendments to Title 12 referencing lobbyist reporting disclosures to:
  - (1) Change reporting disclosures from quarterly to weekly, on every Monday after contact with elected officials/Chiefs of Staff, along with the annual registration report.
  - (2) Differentiate type of contact with elected officials/Chiefs of Staff in the report (i.e. email, phone call, meeting, etc.).
  - (3) Amend section 12.12.800 to clarify requirements for disclosure of all scheduled meetings and scheduled telephone conversations with registered lobbyists.
- (d) Direct the Ethics Commission to recommend revisions to the Gift Ordinance to better align with the State gift rules and simplify the compliance with conflicting rules.

CEQA: Not a Project, File No. PP10-069 City Administrative activities that involve no approvals of any city action. (Mayor)

**The memorandum from Mayor Sam Liccardo, dated November 19, 2015, was approved, the direction was approved as described previously above in Item 3.9(a)-(d). Staff was directed to return to Council in February 2016 with an update.**

**Noes: M. Nguyen.**

### **3. STRATEGIC SUPPORT SERVICES**

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#### **3.10 Actions Related to Salary Setting Commission Recommendations.**

**Recommendation:** As recommended by the Salary Setting Commission, approve an ordinance establishing the following salaries and benefits for the Mayor and City Council for the next two Fiscal Years, the period July 1, 2015 through June 30, 2017:

- (a) For the Mayor, increase the authorized salary from \$114,000 annually to \$125,000 annually.
- (b) For each Council Member, increase the authorized salary from \$81,000 annually to \$92,000 annually.
- (c) Retain the levels of health, dental, life insurance and other benefits in accordance with the benefits provided to management employees in Unit 99.
- (d) Retain the current retirement benefits offered under the CalPERS Tier 2 Plan and the PTC 457 Defined Contribution Plan.
- (e) Increase the vehicle allowance from \$350 per month to \$500 per month for the Mayor and each member of the City Council.
- (f) Continue to require Council Members to pay \$250 for each unexcused absence at scheduled Council meetings, pursuant to City Charter Section 407.

CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities that involve no approvals of any City actions. (City Clerk)

(Deferred from 5/19/15 – Item 3.3 and 6/23/15 – Item 3.21)

**Deferred to January 2016 per Orders of the Day.**

#### **3.11 Approval of the Michael Johnson Memorial Highway Project.**

**Recommendation:** Approve the Michael Johnson Memorial Highway signage project, to be located along Highway 87 in downtown San José. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (Police)

**Approved.**

#### **3.12 Comprehensive Annual Financial Report.**

*Items 3.12, 3.13, 3.14 and 9.2 were heard concurrently.*

**Recommendation:** As recommended by the Public Safety, Finance, and Strategic Support Committee on December 10, 2015, accept the Comprehensive Annual Financial Report for the City of San José for Fiscal Year 2014-2015. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (Finance)

[Public Safety, Finance, and Strategic Support Committee referral 12/10/15 – Item (d)(5)]

**Accepted.**

### **3. STRATEGIC SUPPORT SERVICES**

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#### **3.13 External Auditor's Reports for Fiscal Year 2015-2015.**

*Items 3.12, 3.13, 3.14 and 9.2 were heard concurrently.*

**Recommendation:** As recommended by the Public Safety, Finance, and Strategic Support Committee on December 10, 2015:

- (a) Accept the Single Audit Report for the Basic Financial Statements with Federal and Airport Compliance Sections for the Year Ended June 30, 2015.
- (b) Accept the External Auditor's Report to Management addressed to the Public Safety, Finance, and Strategic Support Committee for the Year Ended June 30, 2015.

CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (Finance)  
[Public Safety, Finance, and Strategic Support Committee referral 12/10/15 – Item (d)(6)]  
**Accepted.**

#### **3.14 Comprehensive Annual Debt Report.**

*Items 3.12, 3.13, 3.14 and 9.2 were heard concurrently.*

**Recommendation:** As recommended by the Public Safety, Finance, and Strategic Support Committee on December 10, 2015, accept the Comprehensive Annual Debt Report for the City of San José for Fiscal Year 2014-2015. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (Finance)

[Public Safety, Finance, and Strategic Support Committee referral 12/10/15 – Item (d)(5)]  
**Accepted.**

### **4. COMMUNITY & ECONOMIC DEVELOPMENT**

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#### **4.1 North San José Area Development Policy Amendment Related to Traffic Impact Fee Incentive Program and Low Intensity Uses.**

**Recommendation:** Adopt a resolution to approve a North San José Area Development Policy amendment to:

- (a) Extend the deadline to qualify for reduced North San José Traffic Impact Fee under the Near-Term Industrial Development Incentive Program by two years to December 31, 2017.
- (b) Revise the criteria to qualify as a low intensity industrial use with traffic impact fee collectible based on trip generation of the use rather than building square footage.

CEQA: North San José Development Policies Update Final Program EIR and Addenda thereto (Resolution No. 72768) (Economic Development/Planning, Building and Code Enforcement/Transportation)

**Resolution No. 77631 adopted. Staff was directed to return to Council in February 2016 with a comprehensive update and/or study session.**

## **4. COMMUNITY & ECONOMIC DEVELOPMENT**

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### **4.2 Substantial Amendment to the FY 2015-16 Annual Action Plan.**

#### **Recommendation:**

- (a) Hold a Public Hearing and take public comment on a Substantial Amendment to the City's Program Year (FY) 2015-16 Annual Action Plan to:
  - (1) Reduce the Unallocated Fund balance of Community Development Block Grant (CDBG) funds from \$2,000,000 to \$1,267,683 in the adopted 2015-16 Annual Action Plan to reallocate to previously approved Community Facility Rehabilitation Projects.
  - (2) Increase funding for the following CDBG funded Community Facility Projects from project carryover funds from the FY 2014-15 Adopted Annual Action Plan:
    - (a) Educare Play Structure Installation - Invest an additional \$250,000 in CDBG funds to complete the installation of the play structure;
    - (b) Rehabilitation of the former Head Start building - Invest an additional \$260,000 in CDBG funds to complete rehabilitation of the building which will provide a community hub in the Santee neighborhood.
    - (c) Recovery Café Rehabilitation project - Invest an additional \$434,189 in CDBG funds to complete rehabilitation of the social hall, commercial kitchen, classrooms, bathrooms, and ADA ramps.
  - (3) Add \$238,913 of Emergency Solutions Grant (ESG) funds from previous year balances to support services for homeless individuals and families.
  - (4) Make an administrative adjustment to move \$211,872 of CDBG funding for the San José Streets Team (SJST) from the Encampment and Place-based Clean-Up Project to the Services for Homeless and Unhoused Populations project.

#### **The Public Hearing Was Held.**

- (b) Adopt a resolution approving the Substantial Amendment to the FY 2015-16 Annual Action Plan.

CEQA: Exempt, Guidelines Section 15061(b)(3) No potential for causing a significant effect on the environment. (Housing)

*Heard Not Before 1:30 p.m.*

**Resolution No. 77632 adopted.**



## **4. COMMUNITY & ECONOMIC DEVELOPMENT**

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### **4.3 Actions Related to the Acquisition of the Plaza Hotel for Housing the Homeless.**

**Recommendation:** Adopt a resolution:

- (a) Authorizing the Director of Housing, on behalf of the City, to negotiate and execute a purchase and sale agreement to acquire the Plaza Hotel, located at 96 South Almaden Boulevard, from the Successor Agency to the Redevelopment Agency of the City of San José for \$750,000 from the Community Development Block Grant Fund for the purposes of housing the homeless for a duration of five years; and
- (b) Authorizing the Director of Housing to negotiate and execute all other legal documents in order to effectuate the acquisition.

CEQA: Exempt, Guidelines Section 15301(a)(d). Existing Facilities, File No. PP15-078.  
Council District 3. (Housing)

**Resolution No. 77633 adopted.**

### **4.4 Potential Research Regarding Impact Fee on Commercial Development to Fund Affordable Housing.**

**Recommendation:**

- (a) Accept the research report from staff on a potential Commercial Impact Fee Nexus Study and Feasibility Study to support the development of affordable housing.
- (b) Discuss and provide direction to staff regarding next steps for a potential Nexus Study and Feasibility Study.

CEQA: Not a Project, File No. PP10-069(a), Reports that involve no approvals of any city actions. (Housing/Economic Development/ Planning, Building and Code Enforcement)

**The revised memorandum from Mayor Sam Liccardo, Vice Mayor Rose Herrera and Council Members Jones and Carrasco, dated December 11, 2015, was approved, accepting the Commercial Impact Fee (CIF) research report, including the following:**

- (1) **Postpone undertaking a Nexus and Feasibility Study for a CIF until San José achieves a 1:1 Jobs/Employed Resident Ratio.**
- (2) **Direct Staff to explore with the Silicon Valley Community Foundation, SPUR and other regional partners, and study how a regional fee structure or revenue-sharing might best address the need for affordable housing within the context of the widening jobs-housing imbalance within the region. These efforts should focus on regional solutions to mitigate the various impacts of that imbalance, including rising housing costs, widening service level inequities, freeway congestion and greenhouse gas emissions.**

**Noes: Carrasco, Kalra, Peralez, Rocha.**

## **4. COMMUNITY & ECONOMIC DEVELOPMENT**

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### **4.5 Rezoning the Real Property Located on the East Side of South Montgomery Street Between The Alameda and West San Fernando Street.**

**Recommendation:**

- (a) Consider the Addendum to the San José Downtown Strategy 2000 Final Environmental Impact Report (Resolution No. 72767) and Diridon Station Area Plan Final Environmental Impact Report (Resolution No. 77096) in accordance with the California Environmental Quality Act.

**Approved.**

- (b) Consideration of an ordinance rezoning the real property from the LI Light Industrial Zoning District to the DC Downtown Primary Commercial Zoning District to allow commercial use on a 0.17 gross acre site, located on the east side of S. Montgomery, between The Alameda and W. San Fernando Street (50 S. Montgomery St.) (Ilya Neizvestny, Owner). Planning Commission recommends approval (6-0-1) (Bit-Badal absent).

CEQA: Addendum to the San José Downtown Strategy 2000 Final EIR (Resolution No. 72767) and the Diridon Station Area Plan Final EIR (Resolution No. 77096). File No. C15-014 – Council District 6. (Planning, Building, and Code Enforcement)

**Ordinance No. 29675 passed for publication.**

### **4.6 Explore a Pilot Sanctioned Encampment in San José.**

**Recommendation:** Accept the staff report related to exploring a pilot sanctioned encampment in San José and provide direction to staff.

CEQA: Not a Project, File No. PP10-069(a), Staff Reports that involve no approvals of any City actions. (Housing)

[Council Referral 12/01/15 – Item 4.6 and 12/08/15 – Item 4.4]

**Dropped.**

## **5. NEIGHBORHOOD SERVICES**

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## **6. TRANSPORTATION & AVIATION SERVICES**

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### **6.1 Proposed Air Service Incentive Program.**

*Items 6.1, 6.2 and 6.3 were heard concurrently.*

**Recommendation:** Adopt a resolution revising the airline support program to facilitate the development of new air service at the Norman Y. Mineta San José International Airport (SJC) by removing the airline matching requirement on new air service marketing funds expended by the City, increasing the new air service marketing funds to be expended by the City, authorizing the Director of Aviation to waive the requirement for an airline to repay waived fees and marketing expenditures in the event of early termination of service, authorizing the Director of Aviation to determine application of the support program for additional frequencies on international routes in extenuating circumstances, and repealing Resolution No. 77099. CEQA: Determination of Consistency with the San José International Airport Master Plan (resolution No. 67380) and the Norman Y. Mineta San José International Airport Master Plan Update Final Supplemental EIR (Resolution No. 71451), File No. PP09-192. (Airport)

The memorandum from Mayor Sam Liccardo and Council Members Jones, Peralez, Carrasco and Khamis, dated December 11, 2015, was approved, accepting the recommendations outlined in the reports dated November 25, 2015 related to Items 6.1, 6.2 and 6.3. Staff was directed to only allow the elements of the policy (Item 6.1) to continue until the Budget Process and in the Spring Council will reconsider/evaluate and may terminate those elements of the plan, and determine what if any, other conditions the Council may want to have in their incentive program in the context of San José budgetary needs of the Airport in June 2016.

Resolution No. 77634 adopted.

### **6.2 Proposed Air Service Incentive Program Approval for New Air Service.**

**Recommendation:**

- (a) Conduct a Public Hearing pursuant to California Government Code Section 53083 regarding economic development subsidies to be provided to Southwest Airlines, Alaska Airlines, British Airways and Lufthansa German Airlines pursuant to the City's Air Service Support Program.

**The Public Hearing Was Held.**

- (b) Adopt a resolution authorizing the City Manager or his designee to provide the following economic development subsidies pursuant to the City's Air Service Support Program:
  - (1) Southwest Airlines:
    - (a) Waive landing fees for 18 months after the initial operation at an approximate value of \$150,669.
  - (2) Alaska Airlines:
    - (a) Waive landing fees for 12 months after the initial operation at an approximate value of \$47,036.
    - (b) City will provide marketing funds of up to \$25,000.

## **6. TRANSPORTATION & AVIATION SERVICES**

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### **6.2 Proposed Air Service Incentive Program Approval for New Air Service. (Cont'd.)**

#### **Recommendation:**

- (b) (3) British Airways:
  - (a) Waive landing fees at 100% for 18 months after the initial operation and 50% for the next 12 months at an approximate value of \$660,833.
  - (b) Waive ticket counter fee at 100% for 18 months after the initial operation and 50% for the next 12 months at an approximate value of \$770,880.
  - (c) Waive gate fee at 100% for 18 months after the initial operation and 50% for the next 12 months at an approximate value of \$402,960.
  - (d) City will provide marketing funds of up to \$600,000.
- (4) Lufthansa German Airlines:
  - (a) Waive landing fees at 100% for 18 months after the initial operation and 50% for the next 12 months at an approximate value of \$465,758.
  - (b) Waive ticket counter fee at 100% for 18 months after the initial operation and 50% for the next 12 months at an approximate value of \$551,232.
  - (c) Waive gate fee at 100% for 18 months after the initial operation and 50% for the next 12 months at an approximate value of \$288,144.
  - (d) City will provide marketing funds of up to \$600,000.

**Resolution No. 77635 adopted.**

- (c) Adopt the following 2015-2016 Appropriation Ordinance Amendments in the Airport Maintenance and Operation Fund:
  - (1) Increase the appropriation to the Airport Department for Non-Personal/Equipment by \$1,225,000; and
  - (2) Decrease the appropriation to the Airport Department for Operations Contingency by \$1,225,000.

CEQA: Determination of Consistency with the San José International Airport Master Plan (Resolution No. 67380) and the Norman Y. Mineta San José International Airport Master Plan Update Final Supplemental EIR (Resolution No. 71451) File No. PP09-192.  
(Airport/City Manager)

**Ordinance No. 29676 adopted.**

### **6.3 Amendment to the Agreement with Civilian, Inc. for British Airways and Lufthansa Airlines Marketing.**

**Recommendation:** Approve a Third Amendment to the Master Consultant Agreement for Airport marketing services with Civilian, Inc. (formerly AdEase), to increase the compensation by \$1,200,000, from \$8,220,000 to an amount not to exceed \$9,420,000, to provide funds for a marketing program with British Airways and a marketing program with Lufthansa Airlines. CEQA: Not a Project, File No. PP10-066, Agreements and contracts for services that involve no physical change to the environment. (Airport)

**Approved.**

## **7. ENVIRONMENTAL & UTILITY SERVICES**

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### **7.1 Agreement with Kennedy/Jenks Consultants, Inc. for Engineering Services for the 7448 – Filter Rehabilitation Project.**

**Recommendation:** Approve a Master Consultant Agreement with Kennedy/Jenks Consultants, Inc. to provide engineering services for the “#7448 – Filter Rehabilitation Project” at the San José-Santa Clara Regional Wastewater Facility from the date of execution through June 30, 2023, in a total amount not to exceed \$4,950,000, subject to the appropriation of funds. CEQA: Statutory Exemption, CEQA Guidelines Section 15262, Feasibility and Planning Studies. (Environmental Services)

**Approved.**

Staff was directed to report back with a supplemental memorandum to Council, the Transportation and Environment Committee (including the WPCP Committee) why the advanced purification treatment facility is separate rather than integrated, and if it can be integrated as part of the City of San José’s existing treatment, can resources be utilized more effectively.

### **7.2 Actions Related to the Agreement with Pacific Gas and Electric Company for the Silicon Valley Energy Watch Program.**

**Recommendation:**

(a) Adopt a resolution:

- (1) Authorizing the City Manager to negotiate and execute a new Master Service Agreement with Pacific Gas and Electric Company for the Silicon Valley Energy Watch program through March 31, 2019.
- (2) Authorizing the City Manager to negotiate and execute an associated Contract Work Authorization with Pacific Gas and Electric Company for the Silicon Valley Energy Watch program in an amount up to \$3,681,067 through December 31, 2018.

**Resolution No. 77636 adopted.**

(b) Adopt the following 2015-2016 Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:

- (1) Establish a new City-Wide appropriation to the Environmental Services Department for Silicon Valley Energy Watch 2016 in the amount of \$484,748.
- (2) Increase the Estimate for Other Revenue by \$484,748.

**Ordinance No. 29677 adopted.**

**Resolution No. 77637 adopted.**

## **7. ENVIRONMENTAL & UTILITY SERVICES**

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### **7.2 Actions Related to the Agreement with Pacific Gas and Electric Company for the Silicon Valley Energy Watch Program. (Cont'd.)**

**Recommendation:**

- (c) Extend the limit date for 2.0 Environmental Service Specialist positions assigned to the Environmental Services Department through March 31, 2019.

CEQA: Not a Project, File No. PP10-066, Agreements and contracts for services that involve no physical change to the environment. Services that involve no physical changes to the environment. (Environmental Services/City Manager)

**Approved.**

### **7.3 Recycle Plus Curbside Material Audit.**

**Recommendation:** As recommended by the Transportation and Environment Committee on December 7, 2015:

- (a) Accept third party studies of single-family residential recyclables characterization and hauler recycling facilities operations;
- (b) Direct staff to return to Council in February 2016 with proposed updated contract language, if applicable, in Districts A and C, to reflect changes discussed in this report for Council consideration; and
- (c) Direct staff to implement pilot studies to (1) process recyclables residue from Districts A and C to recycle organic waste, (2) issue larger garbage carts for single-family residences in focused areas; and return to Council with any recommended program changes as part of the 2016-2017 budget process.

CEQA: Not a Project, File No. PP10-069(a), Staff Reports that involve no approvals of any City Actions. (Environmental Services)

[Transportation and Environment Committee referral from 12/7/15 -- Item (d)(4)]

**Deferred to January 12, 2016 Per Administration.**

## **8. PUBLIC SAFETY SERVICES**

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## **9. REDEVELOPMENT – SUCCESSOR AGENCY**

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### **9.1 Actions Related to the January – June 2016 Administrative Budget and Recognized Obligation Payment Schedule 15-16B.**

Mayor Sam Liccardo convened the Successor Agency to the Redevelopment Agency of the City of San José at 5:50 p.m.

**Recommendation:** Adopt resolutions of the Successor Agency Board to:

(a) Approve the Administrative Budget for January 1 through June 30, 2016.

**SARA Resolution No. 7044 adopted.**

(b) Approve the Recognized Obligation Payment Schedule 15-16B and authorize payment of expenditures for items on ROPS 15-16B, which details the obligations of the Successor Agency for the period of January 1, 2016 through June 30, 2016.

CEQA: Not a Project, File No. PP10-067(b), Appropriation Ordinance. (Successor Agency)  
**SARA Resolution No. 7045 adopted.**

Mayor Sam Liccardo adjourned the Successor Agency to the Redevelopment Agency of the City of San José at 5:51 p.m.

### **9.2 Fiscal Year 2014-2015 Audited Financial Statements.**

*Items 3.12, 3.13, 3.14 and 9.2 were heard concurrently.*

**Recommendation:** Accept the Fiscal Year 2014-2015 Independent Auditor's Reports and Basic Financial Statements for the Successor Agency to the Redevelopment Agency of the City of San José. CEQA: Not a Project. File No. PP10-069(a), Organizational and Administrative Activities that involve no approvals of any city actions. (Successor Agency)  
**Accepted.**

## **10. GENERAL PLAN PUBLIC HEARINGS**

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### **10.1 Tentative Approval of General Plan Consent Calendar Items.**

No General Plan consent calendar items at this time.

## 10. GENERAL PLAN PUBLIC HEARINGS

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*Items 10.2 and 10.3 were heard first before the Consent Calendar.*

### 10.2 General Plan Text Amendment: Greenhouse Gas Reduction Strategy.

**Recommendation:**

- (a) Adopt a resolution certifying the Supplemental Program Environmental Impact Report to the Envision San José 2040 General Plan Program Environmental Impact Report (Resolution No. 76041) providing additional analysis and information on greenhouse gas emissions, and making certain findings concerning significant environmental impacts, mitigation measures and alternatives, adopting a mitigation monitoring and reporting program, and adopting a statement of overriding considerations, all in accordance with the California Environmental Quality Act (CEQA). PP15-060 – District: Citywide

The City Council tentatively approved the memorandum from Mayor Sam Liccardo, dated December 11, 2015:

- (1) Accept the Staff recommendation as described above in 10.2(a).
- (2) Direct Staff to return in the Spring with a work plan, in concert with the Green Vision update, to formulate a GHG-Reduction Goal with targets that would suffice -- if other major cities in industrialized nations set a similar target -- to ensure that global temperature increase does not exceed 2 degrees Celsius. This target should encompass goals for both 2030 and 2050 and should necessarily be more aggressive than that established by international agreement in Paris.

Resolution No. 77517 was tentatively adopted.

- (b) Tentative approval of a General Plan Amendment to incorporate text revisions to the Envision San José 2040 General Plan including, but not limited to, the update and re-adoption of the City's Greenhouse Gas Reduction Strategy.

CEQA: Supplemental Environmental Impact Report to the Envision San José 2040 General Plan Program EIR (Resolution No. 76041) certified by the City of San José on November 1, 2011. Planning Commission recommends approval (6-0-1) (Yesney recused). (Planning, Building and Code Enforcement). File Nos: PP15-060 and GPT15-002 – District: Citywide  
The City Council tentatively adopted the General Plan Amendment.

### 10.3 Adopt a Resolution Approving All General Plan Amendment Actions on December 8, 2015 and December 15, 2015.

**Recommendation:** Adopt a resolution approving all General Plan Amendment actions taken on December 8, 2015 and December 15, 2015.

Resolution No. 77618 adopted, approving all General Plan Amendment actions taken on December 8, 2015 and December 15, 2015.



- **Notice of City Engineer's Pending Decision on Final Maps**

In accordance with Sec. 19.16.140d of the San José Municipal Code, this is notice of the City Engineer's pending decision on the following Final Maps:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/ Units</u>	<u>Type</u>	<u>Proposed Decision</u>
10323	6055 Guadalupe Mines Road	10	La Encina Development LLC	7/5	SFD	Approve

- **Open Forum**

**There was no public testimony from the floor.**

- **Adjournment**

**The Council of the City of San José was adjourned at 5:52 p.m.**



# ***Federated Alternative Pension Reform Settlement Framework Agreement***

## **Background**

In April 2015, the City began discussions with the bargaining units representing employees in the Federated City Employees' Retirement System to settle litigation surrounding Measure B, a pension reform ballot measure that passed in June 2012.

The City engaged in settlement discussions with the litigants in the Measure B litigation - AFSCME, on behalf of the Municipal Employees' Federation (MEF) and Confidential Employees' Organization (CEO); IFPTE, on behalf of the Association of Engineers and Architects (AEA), the Association of Maintenance Supervisory Personnel (AMSP), and the City Association of Management Personnel (CAMP); and the International Union of Operating Engineers, Local No. 3 (OE#3). In addition to the litigants, the City also engaged the Association of Building, Mechanical, and Electrical Inspectors (ABMEI); the Association of Legal Professionals (ALP); and the International Brotherhood of Electrical Workers (IBEW) in the Measure B settlement discussions.

The parties have agreed upon a Federated Alternative Pension Reform Framework (Framework) that presents a path toward the settlement of litigation over Measure B. The Framework is subject to a final overall global settlement with all parties related to the Measure B litigation. The Framework is specific to employees represented by ABMEI, AEA, ALP, AMSP, CAMP, CEO, IBEW, MEF and OE#3. The terms of the Framework also apply to unrepresented employees in Unit 99 and Units 81/82 except where noted.

It should be noted that the City reached agreement on a settlement framework with the San Jose Police Officers' Associations (SJPOA) and the International Association of Fire Fighters, Local 230 (Local 230) in July 2015 and which was approved by City Council in August 2015. Discussions are continuing with the Federated Retirees' Association.

Over the next 30+ years, the savings from the modification to Tier 2, closing of the retiree healthcare defined benefit plan, and continuation of the elimination of the Supplemental Retiree Benefit Reserve (SRBR) are estimated to be \$1.3 billion, for the Federated City Employees' Retirement System.

## **Proposed Implementation Plan**

- The implementation plan is contingent on reaching an agreement with the other parties to litigation. The City has reached agreement on a settlement framework with SJPOA and Local 230, and the City and the Federated Retirees' Association have met several times to continue those discussions and will continue meeting.
- Once a global settlement is reached and before the quo warranto process begins in court, which is a legal proceeding used to overturn a ballot measure post-election, the parties will agree on ballot measure language for November 2016 that will include provisions to ensure:
  - Actuarial soundness of the pension plan
  - Only voter-approved retirement benefit enhancements
  - No retroactive retirement benefit enhancements
  - Any other mutually agreed upon language
- The parties will agree upon and submit a factual stipulation and stipulated judgment in the quo warranto case finding that Measure B is invalid.
  - This will be non-precedent setting and will not include a finding that the City acted in bad faith.

- If the quo warranto process does not result in an invalidation of Measure B, the November 2016 ballot measure would implement the Framework Agreement for employees in the Federated City Employees' Retirement System.

## Rehires

Until the implementation of the alternative pension reform settlement framework is complete, employees who have left City service and return to the City, or new employees, will be placed in the current Tier 2. Implementation will require a court declaring Measure B to be void and/or the voters replacing Measure B. Any implementation will occur after the Council is allowed to modify the municipal code to permit employees to retroactively be placed into either the revised Tier 2 (new employees) or Tier 1 (if rehired and formerly Tier 1). This will create an amortized unfunded liability that the City and these employees will share equally.

*The following is a summary of the Framework's key provisions that would affect current or future employees.*

## Tier 2 Key Points

- 2.0% accrual rate for each year of service with a 70% maximum
- Eligible for an unreduced retirement at age 62
- CPI or a "backloaded" 2.0% Cost of Living Adjustment (COLA), which is a service based formula where an employee would receive a lower COLA for earlier years of service and increases up to a maximum of 2% with additional years of service
- Eligible to retire with five (5) years of service
- 50/50 cost sharing of Normal Cost and Unfunded Liability
  - Ramp-Up of 0.33% per year for Unfunded Liability
- Revised Tier 2 will be retroactive for current Tier 2 employees who will share 50/50 in the amortized unfunded liability created by making the changes retroactive.
- Rehired former Tier 1 employees will go back into Tier 1. These employees will share 50/50 in the amortized unfunded liability created by making the changes retroactive for those Tier 1 employees who have since returned and gone into Tier 2.

## Retiree Healthcare Key Points

- Closes the defined benefit retiree healthcare and dental plan (hereafter, collectively referred to as "retiree healthcare") and establishes a Voluntary Employee Beneficiary Association (VEBA) for new and current Tier 2 employees.
- Offer Tier 1 employees (and Tier 2A employees represented by OE#3 and ABMEI) a one-time irrevocable opt-out into the VEBA, pending IRS approval. The contribution rate for those who opt-out will be 4.5% in the VEBA. Those who stay in the defined benefit plan will have a contribution rate of 7.5%. The difference between the contribution amount for those who opt-out and those who stay in the defined benefit plan (3%) will be from post-tax earnings.
- All current Tier 2A and 2C employees will be removed from the defined benefit retiree healthcare plan. All Tier 2 employees (Tier 2A, 2B and 2C) will pay 2% into the VEBA. Unrepresented Tier 2 employees in Unit 99 and Units 81/2 will not have the option to contribute to the VEBA nor be mandated to make contributions into the VEBA.
- A new lowest cost healthcare plan will be offered with a \$3000 deductible - the current 85/15 cost sharing would not change for active employees.

- A floor will be set for the lowest cost healthcare plan so that the level of coverage does not go below the “silver” level of benefits as specified by the Affordable Care Act.
- Retirees will be offered an In-Lieu Premium Credit of 25% of the monthly premium for those who choose to forego the retiree healthcare plan which will be applied to future premiums.

### Disability Process and Definition Key Points

- Reinstate the previous definition of disability, an employee injured or sick during service and unable to perform the duties of the position then held or any other position in the same classification of positions.
- The retirement board will appoint a 3-member independent medical review panel for disability retirement applications.
- Disability retirement applications must be submitted within one month of separation from the City and not deferred past four (4) years.

### Supplemental Retiree Benefit Reserve (SRBR)/ Guaranteed Purchasing Power (GPP) Key Points

- The SRBR (“13<sup>th</sup> Paycheck”) will continue to be eliminated, preserving the achieved savings.
- A GPP program will be put in place so that current and future Tier 1 retirees can maintain 75% of purchasing power of their pension benefit.
  - There are currently approximately 68 retirees in the Federated City Employees’ Retirement System under 75%.



# Alternative Pension Reform Settlement Framework Agreement

## Background

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In April 2015, the City began discussions with the San Jose Police Officers' Association (SJPOA) and the International Association of Fire Fighters, Local 230 (Local 230) to settle litigation surrounding Measure B, a pension reform ballot measure that passed in June 2012. On July 15, 2015, the parties agreed upon an Alternative Pension Reform Framework (Framework) that presents a path toward the settlement of litigation over Measure B. The Framework is subject to a final overall global settlement with all parties related to the Measure B litigation. The Framework is specific to employees represented by SJPOA and Local 230, however discussions are continuing with the Federated bargaining units and Federated Retirees' Association.

Over the next 30+ years, the savings from the modification to Tier 2, closing of the retiree healthcare defined benefit plan, and continuation of the elimination of the Supplemental Retiree Benefit Reserve (SRBR) are estimated to be **\$1.7 billion**, for Police and Fire.

## Proposed Implementation Plan

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- The implementation plan is contingent on reaching an agreement with the other parties to litigation. The City and the Federated bargaining units met on August 31, 2015 to continue those discussions and will continue meeting.
- Once a global settlement is reached and before the quo warranto process begins in court, which is a legal proceeding used to overturn a ballot measure post-election, the parties will agree on ballot measure language for November 2016 that will include provisions to ensure:
  - Actuarial soundness of the pension plan
  - Only voter-approved retirement benefit enhancements
  - No retroactive retirement benefit enhancements
  - Any other mutually agreed upon language
- The parties will agree upon and submit a factual stipulation and stipulated judgment in the quo warranto case finding that Measure B is invalid.
  - This will be non-precedent setting and will not include a finding that the City acted in bad faith.
- If the quo warranto process does not result in an invalidation of Measure B, the November 2016 ballot measure would implement the Framework Agreement for Police and Fire.

## Rehires and Recruits

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Until the implementation of the alternative pension reform settlement framework is complete, employees who have left City service and return to the Police or Fire Departments, or new employees, will be placed in the current Tier 2. Implementation will require a court declaring Measure B to be void and/or the voters replacing Measure B. Any implementation will occur after the Council is allowed to modify the municipal code to permit employees to retroactively be placed into either the revised Tier 2 (new employees) or Tier 1 (if rehired and formerly Tier 1). This will create an amortized unfunded liability that the City and these employees will share equally.

*The following is a summary of the Framework's key provisions that would affect current or future employees.*

## **Tier 2 Key Points**

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- “Backloaded” 2.7% at 57 formula with 80% maximum, which is a service-based formula where the employee earns a fixed benefit per year of services which is lower for earlier years of service and increases by a specified amount as an employee earns additional years of service.
- CPI or max 2.0% Cost of Living Adjustment
- Eligible to retire with five (5) years of service
- 50/50 cost sharing of Normal Cost and Unfunded Liability
  - Ramp-Up of 0.33% per year for Unfunded Liability
- Revised Tier 2 will be retroactive for current sworn Tier 2 employees who will share 50/50 in the amortized unfunded liability created by making the changes retroactive.
- Rehired former Tier 1 employees will go back into Tier 1. These employees will share 50/50 in the amortized unfunded liability created by making the changes retroactive for those Tier 1 employees who have since returned and gone into Tier 2.

## **Retiree Healthcare Key Points**

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- Closes the defined benefit retiree healthcare plan and establishes a Voluntary Employee Beneficiary Association (VEBA) for new and current Tier 2 employees. The contribution rate will be 4% into the VEBA.
- Offer Tier 1 employees a one-time irrevocable opt-out into the VEBA, pending IRS approval. The contribution rate for those who opt-out will be 5% in the VEBA. Those who stay in the defined benefit plan will have a contribution rate of 8%. The difference between the contribution amount for those who opt-out and those who stay in the defined benefit plan (3%) will be from post tax earnings.
- A new lowest cost healthcare plan will be offered with a \$3000 deductible - the current 85/15 cost sharing would not change for active employees.
- A floor will be set for the lowest cost healthcare plan so that the level of coverage does not go below the “silver” level of benefits as specified by the Affordable Care Act.
- Retirees will be offered an In-Lieu Premium Credit of 25% of the monthly premium for those who choose to forego the retiree healthcare plan.

## **Disability Process and Definition Key Points**

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- Reinstate the previous definition of disability, an employee injured or sick during service and unable to perform the duties of the position then held or any other position in the same classification of positions.
- The retirement board will appoint a 3-member independent medical review panel for disability retirement applications.
- Disability retirement applications must be submitted within one month of separation from the City and not deferred past four (4) years.
- A workers’ compensation offset will be applied to Tier 2 members up a maximum of \$10,000 per employee.
- The parties will convene a Public Safety Wellness Improvement Committee with goals to streamline the process, reduce costs, increase prevention and expedite an employee’s return to work.

## **Supplemental Retiree Benefit Reserve (SRBR)/Guaranteed Purchasing Power (GPP) Key Points**

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- The SRBR (“13<sup>th</sup> Paycheck”) will continue to be eliminated, preserving the achieved savings.
- A GPP program will be put in place so that current and future Tier 1 retirees can maintain 75% of purchasing power of their pension benefit.
  - There are currently approximately 56 retirees in the Police and Fire Plan under 75%.